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2005 RULEMAKING CALENDAR

The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 1380.19(h) and 1420.10 of the regulations in Title 3 of the California Code of Regulations pertaining to cantaloupes.

Notice is also given of a written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on February 14, 2006. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 42682 of the Food and Agricultural Code gives the Secretary the authority to establish, modify, or rescind by regulation, standard container, lid, marking, sizing requirements for commodities, and packing arrangement for any fruits, nuts, or vegetables, upon receiving a petition from a person that the Secretary finds has a substantial interest.

Existing Section 1380.19, subsection (h) of the California Code of Regulations describes the dimensions of fifteen existing cantaloupe containers.

The specific purpose of amending Section 1380.19, subsection (h) is to adopt new standard containers, 44Q, and 44R for cantaloupes.

Section 1420.10 requires that all cantaloupes shall be packed in regular compact arrangement in closed standard container numbers 39, 41, 42, 43, 44, 44A, 44C, 44D, 44E, 44H, 44I, 44J, 44K, and 44N.

The specific purpose of amending Section 1420.10 is to adopt 44Q and 44R as new standard containers for shipping of cantaloupes.

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations would have no effect on savings or increased costs to any state agency, no costs under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department determined that these proposed regulations do not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs to small businesses affected by these proposed changes. This is based on the fact that the proposal offers an additional alternative for shipping large size (jumbo) cantaloupes in new standard containers that meets the needs of the affected commodity group without requiring change on the part of industry.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendments of the proposed regulation would have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that these proposed changes would have no significant statewide adverse economic impact directly affecting businesses, including the ability for California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 407 and 42682 of the Food and Agricultural Code, and to implement, interpret, and make specific Section 42941 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Gary Manning or Steve Patton. Inquiries pertaining to the substance of the proposed regulation may be directed to Gary Manning or Steve Patton. The contact persons may be reached at the Department of Food and Agriculture, Inspection and Compliance Branch, 1220 N Street, Sacramento, CA 95814, (916) 445-2180, fax (916) 445-2427. Written comments may also be submitted via e-mail to sshelton@cdfa.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained on request from the Department of Food and Agriculture. These documents are available on our website at www.cdfa.ca.gov/cdfa/regs.

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in the notice. The Final Statement of Reasons, when available, may also be obtained from the agency contact persons named in the notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture proposes to amend Sections 1446.4, 1454.10, and 1462.10 of the regulations in

Title 3 of the California Code of Regulations pertaining to nectarines, peaches and plums.

Notice is also given of a written public comment period. Any interested person may present statements or arguments in writing relevant to the proposed regulation until 5:00 p.m. on February 13, 2006. Please refer to the contact section of this notice for the contact persons and address information when submitting comments.

A public hearing is not scheduled but will be if any interested person, or his or her duly authorized representative, submits a written request for public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing (if one is requested) or following the written comment period (if no public hearing is requested), the Department of Food and Agriculture, at its own motion or at the instance of any interested person, may adopt the proposal substantially as set forth above without further notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 401 of the California Food and Agricultural Code declares that the California Department of Food and Agriculture (Department) shall promote and protect the agricultural industry of California. Section 407 declares that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which he is directed or authorized to administer or enforce.

Existing Section 1446.4, of the California Code of Regulations establishes basic marking requirements of nonconsumer containers for fresh nectarines.

The specific purpose of amending Section 1446.4, is to remove the varietal marking requirement on nonconsumer containers of fresh nectarines.

Existing Section 1454.10, of the California Code of Regulations establishes basic marking requirements of nonconsumer containers for fresh peaches.

The specific purpose of amending Section 1454.10, is to remove the varietal marking requirement on nonconsumer containers of fresh peaches.

Existing Section 1462.10, of the California Code of Regulations establishes basic marking requirements of nonconsumer containers for plums and fresh prunes.

The specific purpose of amending Section 1462.10, is to remove the varietal marking requirement on nonconsumer containers of plums and fresh prunes.

FISCAL IMPACT STATEMENTS

The Department has initially determined that these proposed regulations would have no effect on savings or increased costs to any state agency, no costs under "Part 7 (commencing with Section 17500) of Division 4" of the Government Code to local agencies or

school districts requiring reimbursement, no other nondiscretionary costs or savings imposed on local agencies, and no costs or savings in federal funding to the State will result from these proposed regulations. The Department determined that these proposed regulations do not impose a mandate on local agencies or school districts.

EFFECT ON SMALL BUSINESS

The Department has initially determined that the proposed changes in the regulations would result in no significant added costs. This is based on the following: The proposed changes allow the peach, plum, and nectarine industries more flexibility in marketing their commodities. Furthermore, the regulation also eliminates the cost associated with physically marking the container with the varietal statement.

EFFECT ON HOUSING COSTS

The Department has initially determined that the amendments of the proposed regulation would have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has initially determined that these proposed changes would have no statewide adverse economic impact directly affecting businesses, including the ability for California businesses to compete with businesses in other states.

ASSESSMENT STATEMENT

The Department has initially determined that the proposed changes in the regulations would not affect the creation or elimination of jobs in California and would neither create nor eliminate or expand existing businesses in California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ALTERNATIVES

The Department has determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

AUTHORITY AND REFERENCE

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 401, 407 and 42682 of the Food and Agricultural Code, and to implement, interpret, and make specific Section 42941 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

CONTACT

Inquiries concerning the proposed administrative action may be directed to Susan Shelton or Steve Patton. Inquiries pertaining to the substance of the proposed regulation may be directed to Steve Patton. The contact persons may be reached at the Department of Food and Agriculture, Inspection and Compliance Branch, 1220 N Street, Sacramento, CA 95814, (916) 445-2180, fax (916) 445-2427. Written comments may also be submitted via e-mail to sshelton@cdfa.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

A complete copy of existing regulations, the proposed changes, and the Initial Statement of Reasons may be obtained on request from the Department of Food and Agriculture. These documents are available on our website at: www.cdfa.ca.gov/is/regulation.htm

In addition, all information, including reports, documentation, and other materials (rulemaking file) related to the proposed action is available upon request from the agency contact persons named in this notice. The Final Statement of Reasons, when available, may also be obtained from the contact persons named in this notice. The text of the proposed regulations with any sufficiently related changes clearly indicated will be made available for 15 days prior to adoption.

TITLE 4. CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The California Pollution Control Financing Authority (the "Authority"), organized and operating pursuant to Sections 44500 through 44563 of the California Health and Safety Code proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Authority proposes to amend Sections 8070, 8071, 8072, 8073, 8074, and 8076 of Title 4 of the California Code of Regulations (the "Amended Capital Access Regulations") concerning

the administration of the Capital Access Loan Program authorized by Section 44559 of the Health and Safety Code (the "Program"). These regulations will be adopted on an emergency basis in December 2005. The current rulemaking action would make these changes permanent.

AUTHORITY AND REFERENCE

Authority: Sections 44520(a) and 44559.5(f) of the Act authorize the Authority to adopt necessary regulations relating to the Capital Access Loan Program established by the Act (CalCAP).

Reference: Sections 44559–44559.9 of the Health and Safety Code. These amended regulations implement, interpret and make specific Sections of the Act by amending Sections 8070, 8071, 8072, 8073, 8074, and 8076 of Title 4, Division 11, Article 7 of the California Code of Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes the Capital Access Loan Program and authorizes the Authority to contract with specified financial institutions to make loans to eligible small businesses that fall just outside of most conventional underwriting standards. (Health and Safety Code, § 44559.2.)

Under existing law, borrowers and lenders must pay a fee on CalCAP loans to the lender's loss reserve account. (Health and Safety Code, § 44559.3.) The Authority matches the fees paid to the loss reserve account at 100 percent or 150 percent. (Health and Safety Code, § 44559.4(d).) The funds held in the lender's loss reserve account are the sole property of the Authority and are used to cover losses on any loan that the lender has enrolled in CalCAP. (Health and Safety Code, § 44559.5.)

The proposed amendments make clarifying changes to existing regulations that implement the CalCAP program. These amendments are the result of periodic evaluation of the regulations and issues encountered during specific loan transactions. The proposed amendments and objectives for each section are as follows:

Section 8070. The existing regulation defines the term "fees" to include fees paid by borrowers and lenders to the lender's loss reserve account pursuant to a specific formula. The proposed revision to this regulation clarifies that a borrower may pay its share of the fees by rolling the fees into the total amount of the CalCAP loan. The second amendment to this regulation would remove duplicative language governing the permissive use of Independent Contributor financing. Subdivision (f) of the existing regulation sufficiently specifies the eligible uses of Independent Contributor financing.

Section 8071. Subdivision (a)(9) of the existing regulation requires a financial institution that participates in the CalCAP program to complete an application that, among other things, permits the Authority to audit the records of the financial institution. The proposed revision clarifies that the Authority may perform the audit on the premises of the financial institution, whether or not the institution is a credit union, bank, community development financial institution, or other qualified lender.

Section 8072. The proposed revision to subdivision (c)(2) of the existing regulation changes "NAIC code" to "NAICS code." The acronym refers to the North American Industry Classification System, the current business trade code system. Regarding the second revision to this regulation, existing federal and state laws outside of the CalCAP program impose restrictions on insider transactions by lenders. Proposed revisions to subdivision (e) of the regulation set forth cross-references to many of these restrictions for purposes of providing guidance and clarification to participating lenders.

Section 8073. The existing regulation requires loss reserve accounts to be insured by the Federal Deposit Insurance Corporation (FDIC) or Securities Investor Protection Corporation. The proposed revision clarifies that loss reserve accounts held by participating credit unions must be insured by the National Credit Union Share Insurance Fund (NCUSIF). NCUSIF is a division of the National Credit Union Association, a federal agency, and is similar to the deposit insurance provided by the FDIC.

Section 8074. The existing regulation sets forth procedures to be used when a CalCAP borrower defaults on a loan and a participating lender seeks reimbursement from the lender's loss reserve account. In some cases, only a portion of a loan from a lender to an eligible borrower is enrolled in the CalCAP program. The proposed revision to subdivision (b) of the regulation clarifies that when a borrower defaults on a loan enrolled in the CalCAP program, the lender may only seek reimbursement for that portion of the loan enrolled in the CalCAP program, not for the entire amount of the loan. The second revision in subdivision (d)(7) would correct a grammatical error and delete the duplicative word "of".

Section 8076. Subdivision (c)(1) of the existing regulation permits the Executive Director of the Authority to terminate a lender's participation in the CalCAP program if the lender becomes the subject of specified enforcement-type proceedings. The proposed revision to subdivision (c)(1) clarifies that termination may occur if the lender becomes the subject of any action by a regulatory agency and the action may impair the ability of the lender to participate in the CalCAP program.

DISCLOSURES REGARDING
THE PROPOSED ACTION

The Executive Director of the Authority has made the following determinations regarding the effect of the Amended Capital Access Regulations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings to any state agency: None.

Cost or savings in federal funding to the state: None.

Significant effect on housing costs: None

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: The Authority has made an initial determination that the Amended Capital Access Regulations will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Assessment regarding effect on jobs/businesses: The Amended Capital Access Regulations will not create or eliminate jobs within California, create new businesses or eliminate existing businesses within California, or affect the expansion of businesses currently doing business within California.

Cost impact on a representative private person or business and effect on small business: The Amended Capital Access Regulations will clarify in regulation the existing practice that small business Program loan applicants may alternatively finance the required contribution to the loss reserve account, typically 2 percent of the loan amount, from the proceeds of their loan. The Authority is not aware of any other specific expenditure that a representative private person or business would necessarily incur in reasonable compliance with the Amended Capital Access Regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Section 11346.5(a)(13) of the Government Code, the Authority must determine that no reasonable alternative to the Amended Capital Access Regulations considered by the Authority or that have otherwise been identified and brought to the attention of the Authority would be more effective in carrying out the purpose for which the Amended Capital Access Regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Authority invites interested persons to present statements with respect to alternatives to the Amended Capital Access Regulations during the written comment period.

AGENCY CONTACT PERSON

Written comments, inquiries and any questions regarding the substance of the Amended Capital Access Regulations shall be submitted or directed to:

Eugene Lee, Program Manager
California Pollution Control Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: (916) 654-5610
Fax: (916) 657-4821
Email: elee@treasurer.ca.gov

The back up contact person is:

Eileen Marxen, Deputy Executive Director
California Pollution Control Financing Authority
915 Capitol Mall, Room 457
Sacramento, California 95814
Telephone: (916) 654-5610
Fax: (916) 657-4821
Email: emarxen@treasurer.ca.gov

AVAILABILITY OF INITIAL STATEMENT
OF REASONS AND TEXT OF THE
PROPOSED REGULATIONS

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Room 457, Sacramento, California 95814, during normal business working hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the Amended Capital Access Regulations. Copies of these items are available upon request from the Agency Contact Person designated in this Notice or at the Authority's website located at <http://www.treasurer.ca.gov/cpcfafa/>.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the Amended Capital Access Regulations to the Authority. The written comment period on the Amended Capital Access Regulations ends at **5:00 p.m. on February 14, 2006**. All comments must be submitted in writing to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Authority. In the event that changes are made to the Amended Capital Access Regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified Amended

Capital Access Regulations for fifteen (15) calendar days after the date on which such Amended Capital Access Regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

PUBLIC HEARING

No public hearing regarding the Amended Capital Access Regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least fifteen (15) calendar days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the Amended Capital Access Regulations for which the hearing is being requested.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the written comment period ends and following a public hearing, if any is requested pursuant to Section 11346.8 of the Government Code, the Authority may adopt the Amended Capital Access Regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least fifteen (15) calendar days before the Authority adopts the proposed Amended Capital Access Regulations, as modified. Inquiries about and requests for copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice. The Authority will accept written comments on the modified regulations for fifteen (15) calendar days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be requested from the Agency Contact Person designated in this Notice or at the Authority's website at <http://www.treasurer.ca.gov/cpcfai/>.

TITLE 8. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

PUBLIC MEETING

On **February 16, 2006**, at 10:00 a.m. in the Auditorium, Room 102 of the Office Building 9, 744 P Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

PUBLIC HEARING

On **February 16, 2006**, following the Public Meeting in the Auditorium, Room 102 of the Office Building 9, 744 P Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

BUSINESS MEETING

On **February 16, 2006**, following the Public Hearing in the Auditorium, Room 102 of the Office Building 9, 744 P Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

The meeting facilities and restrooms are accessible to the physically disabled. Requests for accommodations for the disabled (assistive listening device, sign language interpreters, etc.) should be made to the Board office no later than 10 working days prior to the day of the meeting. If Paratransit services are needed, please contact the Paratransit office nearest you.

NOTICE OF PROPOSED CHANGES TO TITLE 8
OF THE CALIFORNIA CODE OF REGULATIONS
BY THE OCCUPATIONAL SAFETY AND
HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders of the California Code of Regulations, as indicated below, at its Public Hearing on **February 16, 2006**.

1. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4

Appendix B, Plate B-1-a

Sanitation of Personal Safety Devices

A description of the proposed changes are as follows:

1. TITLE 8: CONSTRUCTION SAFETY ORDERS

Chapter 4, Subchapter 4

Appendix B, Plate B-1-a

Sanitation of Personal Safety Devices

INFORMATIVE DIGEST OF PROPOSED
ACTION/POLICY STATEMENT OVERVIEW

Construction Safety Order Appendix B, Plate B-1-a, Sanitation of Personal Safety Devices, contains a list of recommended methods for sanitizing personal safety devices. The Division of Occupational Safety and Health (Division) staff reviewed this appendix and noticed it has not been revised since 1980 and that two of the four recommendations in Plate B-1-a for cleaning equipment are inappropriate since they involve the use of toxic materials. One specifies the use of formalin, a mixture of water and formaldehyde, which has been a regulated carcinogen since 1990 pursuant to Section 5217. An employer using the cleaning method recommended in Plate B-1-a would have to comply with Section 5217. The second recommendation specifies either: carbolic acid (phenol) which is absorbed through the skin and is now known to damage the nervous system; denatured alcohol which is a mixture of ethyl alcohol and poisonous methyl alcohol; and "Lysol" which is now a brand name for a variety of household products. Since articles made of fabrics, leather, or other absorbent materials could be treated with these disinfectants and then be placed in contact with the user's skin, there is potential for adverse health effects. Phenol, methanol, and some constituents of various

products made by Lysol could also physically degrade and damage the components of the safety devices that are made of materials developed long after this appendix was written, and not tested for these cleaning methods.

Consequently, the Division recommends deleting these two recommendations and retaining the final two recommendations in Plate B-1-a which are the use of boiling water or the method recommended by the manufacturer of the safety device.

The effect of the proposed change is to ensure that health conditions of the regulated public are not compromised. It is probable that a majority of employers currently disregard the first two recommendations in Plate B-1-a as no longer appropriate based on material safety data information for the specified cleaning products. Therefore, the proposed change would make the appendix consistent with current industry practice. There is no federal standard counterpart to this appendix.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings will result as a consequence of the proposed action.

Impact on Housing Costs

The Board has made an initial determination that this proposal will not significantly affect housing costs.

Impact on Businesses

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Cost Impact on Private Persons or Businesses

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Costs or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose any significant nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendment will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

The proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in any way require local agencies to administer the California Occupational Safety and Health program. (See *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments may affect small businesses.

ASSESSMENT

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California, as it represents industry practice.

REASONABLE ALTERNATIVES CONSIDERED

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out

the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board’s Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than February 10, 2006. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on February 16, 2006, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at oshsb@hq.dir.ca.gov. The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board’s rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board’s Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Keith Umemoto, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board’s notice and other materials associated with this proposal on the Standards Board’s homepage/website address which is

<http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

TITLE 14. CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

NOTICE OF PROPOSED RULEMAKING

TITLE 14. NATURAL RESOURCES

DIVISION 7. CALIFORNIA INTEGRATED
WASTE MANAGEMENT BOARD

CHAPTER 6. PERMITTING OF WASTE TIRE
FACILITIES

ARTICLE 8.5. WASTE TIRE HAULER REGIS-
TRATION AND MANIFESTING RE-
QUIREMENTS FOR USED AND
WASTE TIRE HAULERS, RE-
TREADERS, USED AND WASTE
TIRE GENERATORS, AND USED
AND WASTE TIRE END-USE FA-
CILITIES.

PROPOSED REGULATORY ACTION

The California Integrated Waste Management Board (Board) proposes to amend Title 14, California Code of Regulations, Division 7, Chapter 6, by amending Articles 8.5, sections 18449 through 18466 and adding section 18459.1.2. The proposed regulations make changes in the existing regulations to implement, interpret and make specific the provisions of SB 876 (Escutia, 2000), as well as correct errors, and add clarifying language to make the regulations more functional, and delete unnecessary language.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period for this rulemaking closes at the close of the hearing on February 16, 2006.** The Board will only consider comments received at the Board's headquarters by that time. Please submit your written comments to:

Claire Miller, Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
Fax: (916) 319-7574
e-mail: cmiller@ciwmb.ca.gov

PUBLIC HEARING

A public hearing to receive public comments has been scheduled for the **February 16, 2006**. The hearing will be held at the

Joe Serna Jr., Cal EPA Building
Coastal Hearing Room
1001 I Street, 2nd Floor
Sacramento, CA 95814

The hearing will begin at **10:00 a.m. on February 16, 2006** and will conclude after all testimony is given. The California Integrated Waste Management Board requests that persons making oral comments also submit a written copy of their testimony at the hearing. The hearing room is wheel chair accessible. If you have any questions, please contact Claire Miller at (916) 341-6705.

INFORMATIVE DIGEST

The California Integrated Waste Management Act (Act), Public Resources Code (PRC) § 40000 et. seq., gives the Board authority to provide for the protection of public health, safety and the environment through waste prevention, waste diversion, and safe waste processing and disposal. PRC § 40502 requires the Board to adopt rules and regulations to implement the Act. Senate Bill (SB) 744 (McCorquodale, 1993) established the Waste Tire Hauler Registration Program and required the Board to adopt regulations for the Waste Tire Hauler Registration and Manifesting Programs. On May 9, 1996, the Board's Waste Tire Hauler Regulations became effective. With the passage of these and subsequent regulations the Board has been regulating the hauling of used and waste tires. The Waste Tire Hauler Program currently registers more than 870 waste tire haulers annually, with more than 6,900 vehicles statewide, and requires that used or waste tires be manifested from the generator to the end-use or disposal facility.

Senate Bill (SB) 876 (Escutia, Statutes of 2000, Chapter 838) expanded the Board's authority to oversee the management of used and waste tires and to better serve the regulated community and to protect public health and safety and the environment. The Board was also charged with implementing a new and improved "California Uniform Waste and Used Tire Manifest System."

This new manifesting system has been implemented through previous regulation packages approved by the Board, and impacts tire generators, haulers, and end-use facilities that generate, haul and/or accept used or waste tires. The intent of SB 876 was to "close the loop" on accountability by requiring copies of a manifest form (CIWMB 647) or Tire Trip Log form

(CIWMB 648) from each party (generator, hauler, and end user) to be submitted to CIWMB for monitoring and tracking tire loads and movement within California.

Unfortunately, this proved to be more of a hardship than originally expected. In August 2004, the Board approved emergency regulations for the California Retreaders allowing them to use a simplified Retreader Trip Log form (CIWMB 187) and to document tire retread transactions on this form. These regulatory changes were adopted as non-emergency regulations by the Office of Administrative Law in September 2005.

In February 2005, the Board approved a modified manifesting form, the Comprehensive Trip Log Form (CIWMB 203) in a further effort to help simplify the required paperwork, placing the responsibilities of completing the forms upon the hauler. This change was met favorably by the regulated community. Additionally, the Board established criteria for allowing the reporting party to submit electronic data to the CIWMB. These emergency regulatory changes were adopted by the Office of Administrative Law in June 2005.

The following list summarizes the more significant proposed changes to the existing regulations:

1. The two (2) required forms, the Manifest form (CIWMB 647) and the Tire Trip Log (CIWMB 648), are being replaced with one form, the Comprehensive Trip Log form (CIWMB 203).
2. The registered waste tire hauler shall complete the Comprehensive Trip Log (CTL) form.
3. The generator(s) and end-use facility(s) shall review the completed information on the CTL form, verifying the information to be accurate and complete, and then initial the form indicating that he/she has reviewed the information.
4. The hauler will then provide tear-off receipts to the generator and/or end-use facility.
4. Establishes criteria for allowing the reporting party to submit electronic data to the CIWMB.

Initial costs for developing forms and software occurred during implementation of the emergency regulations. The cost of future printing of the Comprehensive Trip Log forms will be offset by the savings from not printing the existing manifest and trip log forms.

Staff has also reviewed, interpreted, and updated inaccuracies in the existing regulations for the "California Uniform Waste and Used Tire Manifest System" found in Title 14, California Code of Regulations, Chapter 6, Article 8.5.

POLICY STATEMENT OVERVIEW

Over the past ten years the California Integrated Waste Management Board has been regulating the hauling of used and waste tires in California. The Waste Tire Hauler Program currently registers more than 870 waste tire haulers annually, with more than 6,900 vehicles statewide, and requires that every used or waste tire be manifested from the generator to the end-use or disposal facility. Existing waste tire hauler regulations set forth procedures for the waste tire haulers registration process and current manifest requirements.

The proposed regulations will no longer require two (2) separate forms completed by all responsible parties, but will require the waste tire hauler to complete one form/receipt and have the generator and end-use facility verify the information and then sign off as this information is true and correct. The form will then be submitted to the CIWMB by the hauler. All parties are required to retain the copy of the CTL receipt or hauler copy for a three (3) year period of time. Additionally, these regulations also establish criteria for submitting electronic data to the Board by the responsible party. The regulations make changes in the existing regulations to implement, interpret and make specific the provisions of SB 876 (Escutia, 2000), as well as correct errors, add clarifying language to make the regulations more functional, and delete unnecessary language.

PLAIN ENGLISH REQUIREMENTS

Board staff prepared the proposed final regulations pursuant to the standard of clarity provided in Government Code Section 11349 and the plain English requirements of Government Code Sections 11342.580 and 11346.2(a)(1). The proposed final regulations are considered non-technical and are written to be easily understood by those parties that will use them.

AUTHORITY AND REFERENCES

PRC §§ 40502, 42962, 42966, and 43020 provide authority for these regulations. The purpose of the proposed actions is to implement, interpret, and make specific numerous statutes and regulations related to the transportation of used and waste tires. The following is a list of references cited in these proposed regulation changes: PRC §§ 42950, 42951, 42952, 42953, 42954, 42955, 42956, 42958, 42960, 42961, 42961.5, and 42962.

FEDERAL LAW OR REGULATIONS MANDATE

Federal law or regulations do not contain comparable requirements.

LOCAL MANDATE AND FISCAL DETERMINATIONS

Board staff has determined that the proposed regulations do not impose: 1) a mandate on local agencies or school districts; 2) significant costs or savings to any state agency; 3) costs to any local agency or school district that must be reimbursed in accordance with Government Code §§ 17500 through 17630; 4) other non-discretionary costs or savings on local agencies; or 5) costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

CIWMB staff made an initial determination that the proposed regulations will not have a significant effect on housing costs.

EFFECT ON BUSINESS AND SMALL BUSINESSES/ SMALL BUSINESS DETERMINATION

Board staff made an initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulations may apply to business and small businesses, but as stated above, they will not have a significant adverse economic impact on business and small businesses. Waste tire haulers will complete a more simplified Comprehensive Trip Log for each shipment of tires in lieu of the current Waste Tire Trip Log and Manifest Form.

EFFECT ON COMPETITION WITH OUT-OF-STATE BUSINESS

Board staff has determined that the proposed regulations will not have an adverse economic impact upon the ability of California businesses to compete with out-of-state business.

EFFECT ON CREATION OR ELIMINATION OF JOBS, EXISTING OR NEW BUSINESS IN THE STATE OF CALIFORNIA

Board staff has determined that the proposed regulatory action will not affect: 1) the creation or elimination of jobs within the state of California; 2) the creation of new businesses or the elimination of existing businesses within California; or 3) the expansion of businesses currently doing business with the state.

COST IMPACT ON PRIVATE PERSONS OR ENTERPRISES

Board staff has determined that the adoption of the proposed regulations will not have a cost impact on private persons or enterprises. Cost impacts for the program in general have already been identified in a

previous rulemaking. Waste tire haulers, generators, and end use facilities are essentially the only members of the regulated community that are affected by the proposed regulations. There will be no increase in the universe of individuals and businesses presently regulated. There is no cost associated with waste tire haulers, generators, and end use facilities using the "Comprehensive Trip Log." Therefore, the proposed regulations impose no costs on waste tire haulers, generators, or end use facilities, and should not have a significant adverse economic impact on individuals and businesses that comply with the statute and regulations governing waste and used tire hauling.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning the substance of the proposed action may be directed to:

Claire Miller, Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, California 95812-4025
(916) 341-6705 phone, (916) 319-7574 facsimile
e-mail: cmiller@ciwmb.ca.gov

Back-up contact person to whom inquiries concerning the proposed administrative action may be directed:

Keith Cambridge, Special Waste Division
California Integrated Waste Management Board
P.O. Box 4025
Sacramento, CA 95812-4025
(916) 341-6422 phone, (916) 319-7655 facsimile
e-mail: kcambrid@ciwmb.ca.gov

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file, and all information that provides the basis for the proposed regulations, available for inspection and copying throughout the rulemaking process at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. The Final Statement of Reasons will also be made available once it is prepared. Copies may be obtained by contacting Claire Miller at the address or phone number listed above. For more timely access to the proposed text of the

regulations, and in the interest of waste prevention, interested parties are encouraged to access the Board's Internet homepage at www.ciwmb.ca.gov/rulemaking

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text—with changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for the modified text should be made to the contact person named above. The Board will mail any modified text to all persons who testify at the public hearing; all persons who submit written comments at the public hearing; all persons whose comments are received during the comment period; and all persons who request notification of the availability of such changes. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 15. DEPARTMENT OF CORRECTIONS AND REHABILITATION

NOTICE OF PROPOSED REGULATIONS California Code of Regulations

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code (GC) Sections 12838.5, 12838.7, and the additional authority of GC Sections 87300–87302 and 87306, proposes to amend Section 7001 of Division 7, and repeal Section 2005 of Division 2, Section 3416 of Division 3, and Chapter 1, Article 2, Section 4020 of Division 4 of the California Code of Regulations (CCR), Title 15, relating to the disclosure of economic and financial interests in accordance with the requirements of the Conflict of Interest Code for the Department of Corrections and Rehabilitation.

PUBLIC HEARING

Date and Time: **March 6, 2006, 9:00 am
to 11:00 am.**

Place: Water Resources Auditorium
1416 Ninth Street
Sacramento, CA 95814

Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD

The public comment period will close **March 6, 2006 at 5:00 pm.** Any person may submit public comments in writing (by mail, by fax or by e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the Department of Corrections and Rehabilitation, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916)358-2636; or by e-mail at **RPMB@cdcr.ca.gov** before the close of the comment period.

CONTACT PERSON

Please direct any inquiries regarding this action to:

Timothy M. Lockwood, Chief
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 358-1655

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Randy Marshall
Regulation and Policy Management Branch
Telephone (916) 358-1655

Questions regarding the substance of the proposed regulatory action should be directed to:

Ellery Kuhn
Office of Personnel Services
Telephone (916) 322-0619

LOCAL MANDATES

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Section 17561.

FISCAL IMPACT STATEMENT

- Cost or savings to any state agency: None
- Other non-discretionary cost or savings imposed on local agencies: None
- Cost or savings in federal funding to the state: None

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**SIGNIFICANT STATEWIDE ADVERSE
ECONOMIC IMPACT ON BUSINESS**

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business, because they are not affected by the internal management of state prisons.

**ASSESSMENTS OF EFFECTS ON JOB
AND/OR BUSINESS CREATION,
ELIMINATION, OR EXPANSION**

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

**AVAILABILITY OF PROPOSED TEXT AND
INITIAL STATEMENT OF REASONS**

The Department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and Notice of Proposed Action will also be made available on the Department's website <http://www.cdcr.ca.gov>.

**AVAILABILITY OF THE FINAL
STATEMENT OF REASONS**

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

**AVAILABILITY OF CHANGES
TO PROPOSED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

On May 10, 2005, Legislation (Senate Bill 737) was signed into law and became effective on July 1, 2005. On this effective date, the Youth and Adult Correctional Agency (YACA), which consisted of the California Department of Corrections (CDC), the Department of the Youth Authority (YA), the Board of Prison Terms (BPT), the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority was abolished, and reorganized into the CDCR.

GC Section 12838(a) creates the CDCR, headed by a secretary. The CDCR shall consist of Adult Operations, Adult Programs, Juvenile Justice, the Corrections Standards Authority, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board.

GC Section 12838.5 vests to the CDCR, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of the abolished entities: YACA, CDC, YA, Commission on Correctional Peace Officer Standards and Training, Board of Corrections, and State Commission on Juvenile Justice, Crime and Delinquency Prevention.

GC Section 12838.7 provides that the Secretary of the CDCR shall serve as the Chief Executive Officer of the CDCR and shall have all of the powers and authority which are conferred upon a head of a state department by Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

GC Sections 87300–87302 requires that every agency shall adopt and promulgate a Conflict of Interest (COI) Code which shall designate the positions which involve the making, or participation in the making, of decisions which may foreseeably have

a material effect on any designated employees financial interest for reportable investments, business positions, interests in real property, and sources of income.

GC Section 87306 requires every agency to amend its COI code when change is necessitated by changed circumstances, including the creation of new positions and relevant changes in the duties assigned to existing positions.

Since enactment of the Political Reform Act in 1974, state agencies are required to adopt and put into force a COI code for the purposes of identifying and deterring economic and financial conflict in governmental decision making by providing the disclosure of the financial interests and assets of public officials. Under such codes, individual agencies identify which positions within their agency should report interests and assets and the information disclosed and reported to the Fair Political Practices Commission (FPPC).

With the creation of the CDCR, four existing COI codes have been made obsolete and must be updated or replaced within six months of the July 1, 2005 effective date of SB 737. This proposed action will incorporate into the CCR, Title 15 an amended COI code for the new CDCR.

In order to amend and or repeal multiple sections from different Divisions of the Title 15, it was determined that because YACA was the “parent” body into which the other subordinate units have been merged, the best approach would be to amend YACA’s code (Title 15, Section 7001) together with using preserved and updated content from the now abolished COI codes for the former BPT (Section 2005), CDC (Section 3416), and YA (Section 4020) while at the same time repealing the codes of the above named abolished entities.

This new proposed COI code for the CDCR will:

- Incorporate into Title 15, Section 7001, structural and position changes mandated by SB 737 with new titles named in the act.
- Retain and transfer the current listing of appropriate positions from the old COI codes to the new CDCR COI code, with certain positions being dropped, new positions added and obsolete positions deleted or replaced with appropriate titles to match the contemporary organizational structure.
- Better identify the positions affected which may be subject to a disqualifying conflict of interest with an emphasis not to include all individuals in certain positions that are nearly universal to the Department (such as Staff Services Analysts, Associate Governmental Program Analysts, Staff Services Managers), who will not be subject to the requirements of this rule.

- Show the positions under “divisional” headings so as to also better distinguish which employees are required to comply with the provisions of this regulation.
- Reduce the number of disclosure categories (Appendix B) from the existing six categories of the superseded COI codes down to three. This allows similar categories to be combined into fewer designations in order to eliminate redundancy and to provide greater efficiency in the text.

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on February 14, 2006.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board’s office not later than 5:00 p.m. on January 30, 2006.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.2 and 2570.3 of the Business and Professions Code, and to add section 4156 of the California Code of Regulations, the Board is proposing revising Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law requires an occupational therapist (OT) complete post professional education and supervised on-the-job training in order to provide treatment to clients in the advanced practice areas of hand therapy,

physical agent modalities, and swallowing assessment, evaluation, and intervention. Advanced practice approval is granted once a licensee demonstrates competency in the specific area for which they applied. Advanced practice approval does not signify expertise.

Amend section 4154. The proposed language removes the term "certification" from the regulation in order to eliminate confusion between occupational therapists who have advanced practice approval and those who are experts in their field.

Amend section 4155. The proposed language establishes time frames for the Board to respond to advanced practice applications and establishes an application abandonment period of six months.

Add section 4156. The proposed language prohibits occupational therapists from using advanced practice acronyms or initials behind their names in advertising or representing themselves as experts.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because

the regulation does not regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may request a hearing to present statements or arguments orally or in writing relevant to the above determinations, if requested within 15 days of the close of the written comment period.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

April Freeman
California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 322-3278
(916) 445-6167 (FAX)
April_Freeman@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 322-3394
(916) 445-6167 (FAX)
Heather_Martin@dca.ca.gov

WEBSITE ACCESS

All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations** > **Proposed Regulations**.

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on February 14, 2006.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board's office not later than 5:00 p.m. on January 30, 2006.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by sections 134, 152.6, 163.5 and 2570.20 of the Business and Professions Code, and to implement, interpret or make specific sections 2570.9, 2570.10, and 2570.16 of the Business and Professions Code, the Board is proposing amending Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law establishes a one-year term for licenses and certificates issued to occupational therapists and occupational therapy assistants. Licensees are required

to renew their licenses/certificates by the last day of their birth month. If they do not pay the renewal fee within thirty days of the expiration date of their license, they are also required to pay a delinquent fee equal to one half of the renewal fee. Further, effective January 1, 2006, the law requires that licensees complete twelve (12) professional development units during the preceding renewal period as a condition of license renewal.

Modify section 4120. The proposed language modifies the term of a license/certificate from one year to two years and adds clean-up language that requires licensees to document compliance with continuing competency requirements on their license renewal form.

Modify section 4121. The proposed language eliminates the grace period for charging a delinquent fee to licensees who do not pay their license renewal fee within thirty (30) days of the expiration date of their license.

Modify section 4161. The proposed language will bring the continuing education requirements in line with biennial license renewal. It will also clarify that licensees will not be given partial credit for professional development activities listed in subsection (c).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because the regulation does not regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES

The alternative to this proposed regulation is contained in a previous regulatory package which amends Title 16, California Code of Regulations, section 4130—Fees (Z-05-0627-1). Within that regulatory package the Board will consider two options concerning the license renewal fee. Depending on the outcome of that decision, the Board will either reduce the annual renewal to \$75.00, or transition to a biennial renewal with the fee remaining at \$150.00. If the Board does not decide to transition to biennial renewal, this regulatory package will be withdrawn. Both options will reduce the license renewal fee by half of its current figure.

Any interested person may request a hearing to present statements or arguments orally or in writing relevant to the above determinations, if requested within 15 days of the close of the written comment period.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

April Freeman

California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 322-3278
(916) 445-6167 (FAX)

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
444 North Third Street, Suite 410
Sacramento, CA 95814
(916) 322-3394
(916) 445-6167 (FAX)
Heather_Martin@dca.ca.gov

WEBSITE ACCESS

All materials regarding this proposal can be found on-line at **www.bot.ca.gov** > **Laws and Regulations** > **Proposed Regulations**.

TITLE 16. BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments relevant to the proposed action in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Board at its office no later than 5:00 p.m. on February 14, 2006.

The board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the board. The request must be received in the board's office not later than 5:00 p.m. on January 30, 2006.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code, and to implement, interpret or make

specific section 2571 of the Business and Professions Code, the Board is considering amending Division 39, Title 16 of the California Code of Regulations as follows:

**INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW**

Add section 4152.1 Use of Topical Medications

On January 1, 2005, Senate Bill 1913 (Figueroa, Chapter 695, Statutes of 2004) took effect, allowing a licensed occupational therapist (OT), who is authorized by the Board to use physical agent modalities pursuant to section 2570.3(d) of the Business and Professions Code, to apply topical medications prescribed by the patient's physician and surgeon, certified nurse-midwife, nurse practitioner, or physician assistant, if the OT complies with regulations adopted by the Board. The purpose of the proposed regulation is to implement and make specific this legislation.

Existing law provides for a licensed OT, authorized by the Board to provide advanced practices in the use of physical agent modalities, to apply topical medication prescribed by specified health professionals. The proposed regulation will limit the application of topical medications to administration via iontophoresis and phonophoresis and require that the medication be ordered on a specific or standing basis by a practitioner legally authorized to order or prescribe such medication.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not affect small businesses because the regulation does not regulate small businesses, does not require reports or any other compliance activities.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may request a hearing to present statements or arguments orally or in writing relevant to the above determinations, if requested within 15 days of the close of the written comment period.

**TEXT OF PROPOSAL AND INITIAL
STATEMENT OF REASONS
AND INFORMATION**

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

**AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS
AND RULEMAKING FILE**

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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WEBSITE ACCESS

All materials regarding this proposal can be found on-line at www.bot.ca.gov > **Laws and Regulations** > **Proposed Regulations**.

GENERAL PUBLIC INTEREST

DEPARTMENT OF FISH AND GAME

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1
Tracking Number 2080-2005-030-01

Project: Cypress Avenue Bridge Project
Location: Redding, Shasta County
Notifier: City of Redding, Redding, California

BACKGROUND

The City of Redding ("City"), in cooperation with the California Department of Transportation and the Federal Highway Administration ("FHWA"), is proposing to replace and widen the bridge over the Sacramento River on Cypress Avenue ("Project"). The new bridge will increase the number of traffic lanes from two to three lanes in each direction and provide bicycle lanes and sidewalks in both directions. The Project will also reduce the number of piers in the Sacramento River floodplain from seven to four.

The Project could result in the take of Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) and Central Valley spring-run Chinook salmon (*O. tshawytscha*) (together "Chinook salmon"). Sacramento River winter-run Chinook salmon are listed as endangered under the California

and federal Endangered Species Acts. Central Valley spring-run Chinook salmon are listed as threatened under the California and federal Endangered Species Acts. The Project will require the removal of approximately 0.045-acre of riparian vegetation and the placement of a gravel work pad. The placement of the pad could result in the temporary loss of potential Chinook salmon spawning habitat and the Project could contribute sediment and petroleum-based products into the Sacramento River.

Because the Project has the potential to take species listed under the federal Endangered Species Act ("ESA"), FHWA consulted with the National Oceanic and Atmospheric Administration National Marine Fisheries Service ("NOAA Fisheries"). On March 23, 2004, NOAA Fisheries issued to FHWA a "no jeopardy" biological opinion (151422SWR01SA5675:MET). The biological opinion describes the Project and sets forth measures to mitigate impacts to Chinook salmon and temporary adverse impacts to spawning and rearing habitat in the vicinity of the bridge. On June 18, 2004, the City requested an amendment to the biological opinion. On March 11, 2005, NOAA Fisheries granted the City's request by amending the biological opinion. On November 17, 2005, the Director of the Department of Fish and Game ("Department") received a notice from the City requesting a determination that the amended biological opinion is consistent with the California Endangered Species Act ("CESA").

DETERMINATION

The Department has determined that the amended biological opinion is consistent with CESA. The mitigation measures in the opinion meet the conditions set forth in Fish and Game Code section 2081, subparagraphs (b) and (c), which, when met, authorize the incidental take of CESA-listed species. Specifically, the Department finds that the take of Chinook salmon will be incidental to an otherwise lawful activity (i.e., the replacement of the Cypress Avenue Bridge) and the mitigation measures identified in the amended biological opinion will minimize and fully mitigate the impacts of the authorized take on Chinook salmon. The mitigation measures in the opinion include, but are not limited to, the following:

1. The temporary and permanent loss of riparian vegetation will be compensated for by replacing riparian vegetation at a ratio of 3:1 for each woody riparian plant and/or linear foot of habitat onsite. If sufficient mitigation to permanent impacts to riparian vegetation cannot be accomplished onsite, the City will purchase riparian wetlands at a ratio of 3:1 for acreage lost at the Department's Battle Creek Riparian mitigation site.

2. All percussive and in-channel work is restricted to the period between October 15 and April 15. Percussive work may be started on October 1 provided no Chinook salmon redds have been created within 150 yards of the work area in the 30 days prior to the commencement of the work. Percussive work will not occur at night to allow quiet conditions during peak fish migration periods.
3. A gravel work pad containing clean, washed one- to four-inch gravel armored around the edges with larger materials will be constructed between April 15 and May 1 on each side of the Sacramento River around the areas where the new piers 2 and 5 will be constructed and the old bridge piers will be removed. Following removal of non-gravel surfacing materials and other materials as required by the California Reclamation Board to avoid flood risk, the remaining spawning gravel shall be allowed to wash out following completion of the bridge construction to augment existing spawning gravel supplies downstream.
4. Upstream and downstream anadromous fish passage shall be maintained at all times.
5. Qualified fisheries biologists will be employed to monitor coffer dam dewatering for the purpose of capturing and relocating any stranded salmonids.

Based on the Department's consistency determination, the City does not need to obtain authorization from the Department under CESA for take of Chinook salmon that occurs in carrying out the Project, provided the City complies with the mitigation measures and other conditions described in the amended biological opinion. However, if the Project as described in the opinion, including the mitigation measures therein, changes after the date of the opinion, or if NOAA Fisheries amends or replaces that opinion, the City will need to obtain from the Department a new consistency determination (in accordance with Fish and Game Code section 2080.1) or a separate incidental take permit (in accordance with Fish and Game Code section 2081).

DEPARTMENT OF FISH AND GAME

Public Interest Notice CESA CONSISTENCY DETERMINATION FOR Eureka Waterfront and Woodley Island Marina Maintenance Dredging Project Humboldt County

The Department of Fish and Game ("Department") received notice on December 16, 2005 that the City of Eureka and Humboldt Bay Harbor, Recreation, and Conservation District ("Notifiers") propose to rely on consultations between federal agencies to carry out a

project that may adversely affect species protected by the California Endangered Species Act ("CESA"). This project consists of suction dredge excavation of 216,000 cubic yards of material from the Eureka city waterfront and Woodley Island Marina and transmission and discharge of that material through a pipeline to the beach west of the city of Samoa in Humboldt County.

The National Marine Fisheries Service, on December 6, 2005, issued a no jeopardy federal biological opinion (151422SWR2004AR9177:DA) which considers the Federally and State threatened Southern Oregon/Northern California Coast (SONCC) Coho salmon (*Oncorhynchus kisutch*) and authorizes incidental take.

Pursuant to California Fish and Game Code Section 2080.1, the Notifiers are requesting a determination that the federal biological opinion 151422SWR2004AR9177:DA is consistent with CESA.

If the Department determines that the federal biological opinion is consistent with CESA, the Notifiers will not be required to obtain an incidental take permit under CESA for the proposed project.

DEPARTMENT OF FISH AND GAME

Consistency Determination Fish and Game Code Section 2080.1 California Endangered Species Act (CESA) No. 2080-2005-031-04

Project: Lower Tule River Hydroelectric Project,
FERC #372, Flume 7 Repair
Location: East of Springville, Tulare County
Notifier: Southern California Edison (SCE)

BACKGROUND

SCE's Lower Tule River Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) No. 372, is an existing generating facility located in the western foothills of the Sierra Nevada on the Middle Fork of the Tule River. The general Project area is located parallel to Highway 190 and north of the Middle Fork Tule River east of Springville, California. With the exception of the powerhouse, the Project is located on public lands managed by the United States Forest Service, Sequoia National Forest. FERC issued a new license for this Project on September 3, 2004.

The hydroelectric project has been in operation as a run-of-river project for nearly one hundred years. The Project consists of two small diversion dams, two short conduits which converge to form a 6-mile-long water conveyance system consisting of

cement canals and sheet-metal flumes with wooden support structures, a penstock (pressurized pipe following the nonpressurized flowline), a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW), an approximately 200-foot long transmission line, and a tailrace which leads back to the Tule River. The operation of this hydroelectric Project is closely linked to water supply to the nearby town of Springville, which receives its water entitlement from the powerhouse just as the water enters the tailrace for return to the river.

A large fire occurred in the Sequoia National Forest in August 2004, destroying 951 feet of hydroelectric project flumes (Flumes 7, 9 and 10), and damaging an additional 2,369 feet of flumes (Flumes 4, 5, 6, 7, 7 1/2, 8, and 11). An extensive flume reconstruction project is underway, in part, to put the hydroelectric project back into service. In the first phase, the 2,369 feet of damaged flume will be repaired essentially "in-kind" using replacement wood structures and new flume sheets where required, and the more heavily damaged Flumes 9 and 10 will be replaced with steel siphons supported on concrete saddles. This work is currently underway, and will have no effect on the California endangered and federally threatened Springville clarkia (*Clarkia springvillensis*). On June 27, 2005, another fire occurred in the same general area. This later fire damaged Flume 3 and has caused additional damage to Flumes 4 and 7; however, the additional flume reconstruction work will not occur in areas where the Springville clarkia is present.

During the next phase of flume reconstruction, a portion of Flume 7 will be replaced with a steel siphon supported on concrete saddles. An estimated 350 individual Springville clarkia plants occur in the Flume 7 area between a point 25 feet upstream from Bent 7-27 to Bent 7-35, a linear distance of about 160 feet (Springville clarkia population CS01). Approximately 80 percent of the plants are within 10 feet of the bent legs (vertical wooden supports). The majority of the plants are uphill from the flume/siphon alignment.

Proposed construction work in the Springville clarkia CS01 population area consists of creating four concrete supports for the steel siphon, installing the steel siphon, and welding the siphon's sections together. To construct the concrete supports, four excavations, each 4-feet by 6-feet by 3-feet deep, will be made with hand-tools (shovels, jackhammers, and wheelbarrows) to allow construction of wooden forms, one at each of the four locations. The top two inches of topsoil will be removed from each footing excavated, bagged, and stored adjacent to each excavation for later spreading in the CS01 area after construction (the

remainder of the earthen material will be spread outside of the CS01 area, in the vicinity of the new siphon alignment, along trails and near footings).

Pre-painted 48-inch diameter pipe siphon sections will be set in place on temporary cribbing by a helicopter. The siphon sections will be welded together, in the correct alignment, and concrete forms constructed in the previously exacted foundation locations underneath the pipe. Concrete will be placed by helicopter, and after curing the forms and cribbing will be removed. Finally, the completed siphon will be spot-painted in the vicinity of the welds.

Mechanized equipment, utilizing a Bobcat or equivalent machine, and foot traffic will only be allowed on 4-foot by 8-foot plywood sheets in the flume/siphon alignment, with compressors and welding machines located outside the CS01 area.

Because of the Project's potential to take a species protected by the Federal Endangered Species Act, on November 3, 2005, the United States Fish and Wildlife Service (Service) issued a Biological Opinion (1-1-06-F-0003) for SCE's Lower Tule River Hydroelectric Project (FERC project No. 372), Flume 7 repair. This Biological Opinion (BO) describes the Project actions and sets forth measures to mitigate impacts to the federally-threatened Springville clarkia (*Clarkia springvillensis*). Springville clarkia is also listed as an endangered species under the California Endangered Species Act, Fish and Game Code Section 2050 et seq. On November 17, 2005, the Director of the Department of Fish and Game (DFG) received a request from SCE pursuant to Section 2080.1 of the Fish and Game Code that DFG find the federal BO consistent with CESA.

There are 26 known populations of Springville clarkia within the SCE Tule River hydroelectric Project. Population sizes range from 40 individuals to thousands of plants. The total number of Springville clarkia plants surveyed in 2005 is estimated at 10,110 plants. Only one Springville clarkia population was affected by the 2004 and 2005 fires (CS01). The population of CS01 in 2004 was 40 plants. The increase in suitable habitat caused by the fire and subsequent loss of the flume structure allowed this plant to colonize additional sites within the flume right of way. The population estimate in 2005 was approximately 350 plants. Implementation of the proposed Project will directly affect up to 80 percent of the CS01 population or 280 individual Springville clarkia plants during the reconstruction of Flume 7. The seedbank of the plant may be affected by the proposed action. Effects may include a change in germination and seedling conditions, but specific impacts are unknown at this time. In order to fulfill the FERC requirements of Article 405 of the new license for the hydroelectric project, a *Springville Clarkia*

Management Plan was completed by SCE in August 2005, and is set forth in the BO. The purpose of the *Springville Clarkia Management Plan* is to reduce the effects of project operations and maintenance activities on the listed Springville clarkia populations within the hydroelectric project area. Several of the Management Plan guidelines are listed in the avoidance, minimization, and mitigation measures listed below.

DETERMINATION

Based on the terms and conditions in the federal BO (1-1-06-F-0003), DFG has determined that the Project is consistent with CESA because the Project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081 (b) and (c) for authorization of incidental take of species protected under CESA. Important to DFG's findings are several measures described in the BO that address expected or potential impacts to Springville clarkia. These include, but are not limited to, the following:

1. Earth-disturbing activities will occur between July 15 and January 15, generally considered to be the dormant season of Springville clarkia. Should dry conditions extend beyond January 15, earth-disturbing activities may occur until it is determined by the Project's environmental monitor (biologist Gary Adest, Ph.D.) and SCE's biological consultant (John Stebbins) that activities should cease because the dormant season has ended.
2. Comprehensive monitoring surveys will be performed in 2006, 2007, and 2008 to compare the 2002–2005 population data. The described population and subpopulation locations will be permanently marked by an internal SCE system that will allow the operations personnel (but not the general public) to always be aware of the specific sites, and to avoid any future unintentional deleterious activities.
3. The top two inches of topsoil will be removed from the Springville clarkia population area to be disturbed and will be bagged and stored adjacent to each footing excavation for spreading in the CS01 area after construction. After construction, the topsoil will be lightly spread out on the downhill and uphill sides of the flume alignment.
4. Surveys will be conducted during the Springville clarkia flowering season, prior to and after non-routine, scheduled O&M activities that will occur in areas known to contain Springville clarkia. Surveys will be conducted in the potential area of effect and any observed Springville clarkia populations will be marked and avoided. Inventory surveys will be completed by a qualified botanist, pursuant to the botanical survey guidelines of the

California Native Plant Society. Specifically, surveys will be conducted during the appropriate season (i.e., late May or early June), associated species and habitat types will be identified, occupied locations will be mapped, and the number of individuals will be counted or estimated. The results of these inventories will be submitted to the responsible land and resource management agencies (Sequoia National Forest, Service, and DFG) as a summary report every 5 years.

5. Routine O&M vegetation-brushing and replacement of select flume bents, and scheduled non-routine O&M activities along the Project flowline, penstocks, and adjacent access roads will be performed between July 15 and January 15 in areas known to support Springville clarkia. Routine, annual clearing of footings and access trails, which is not earth disturbing in nature and involves no stockpiling of brush, will be performed between July 15 and March 15, in areas known to support Springville clarkia. O&M maintenance activities along the Project flowline, penstocks, and adjacent access roads will take place after Springville clarkia plants have flowered and set seed, but before the seeds germinate to avoid taking of plants by direct removal, or as a result of stockpiling brush.
6. The piling of cut brush within known marked Springville clarkia population sites will be strictly avoided during brush removal operations. All brush that is cut within marked population sites will be manually transported at least 50 feet outside the boundary of the known population location.
7. SCE personnel will be kept informed of the Springville clarkia management guidelines through an existing *Endangered Species Alert Program* and an *Environmental Training Program*. In addition, the Springville Clarkia Management Guidelines are included in published Hydro Station Orders, and signage is placed at various approaches to the Lower Tule flowline to remind all personnel of SCE's commitment to protect the listed Springville clarkia.

Pursuant to Section 2080.1 of the Fish and Game Code, authorization under CESA will not be required for incidental take of Springville clarkia resulting from this Project, provided the Project is implemented as described in the BO. If there are any substantive changes to the Project as described in the BO, including changes to the avoidance, minimization, and mitigation measures, or if the Service amends or replaces the BO, SCE will need to obtain a new Consistency Determination or a CESA Incidental Take Permit from the DFG.

DFG requests that SCE provide copies of all annual reports, other monitoring reports, and other circulated materials relevant to the Project's effects on Springville clarkia to DFG at the following address or at any substitute location that DFG may subsequently identify.

Department of Fish and Game
San Joaquin Valley and Southern Sierra Region
1234 East Shaw Avenue
Fresno, California 93710

DEPARTMENT OF FISH AND GAME

Consistency/Inconsistency Determination
Fish and Game Code Section 2080.1
California Endangered Species Act (CESA)
No. 2080-2005-035-04

Project: Oil and Gas Programmatic Biological
Opinion

Location: Kings and Kern Counties

Notifier: Bureau of Land Management

BACKGROUND

The Bureau of Land Management (BLM) routinely authorizes construction, operation, and maintenance of third party oil and gas facilities including oil and gas wells, pipelines, oil tanks, roads to oil wells, power and communication lines, and cables associated with oil well development. Third party actions authorized may include oil and gas exploration, well drilling, installation, operation, removal of support facilities, general operation and maintenance, and geophysical exploration. BLM issues oil and gas related authorizations under two separate acts, the Federal Land Planning and Management Act and the Mineral Leasing Act. The geographic scope of the BO includes surface and subsurface lands administered by the BLM in Kings and Kern Counties. The BLM authorizes actions related to oil and gas development by third party applicants such as Chevron Oil Company, Mobil, J.P. Oil Company, ARCO, TEPI, Santa Fe Energy, Texaco, Rio Bravo, Bob Ferguson Independent, McFarland Energy, UNOCAL, Trio Petroleum, Oxy USA, EMJAYCO, Magness Petroleum, H.L. Hall, Crass Petroleum, Gray Energy, SWEPI, Oakland Petroleum, J. M. Oil Company, Victory Oil Company, MacPherson Oil Company, Western Geophysical, Stockdale Oil and Gas Inc., Bakersfield Energy Resources, Petro Mineral Corporation, Central California Oil Company, Phillips Petroleum, Forest Gray, Berry Petroleum, D. C. Oil Company, United Energy Company, Koch Oil Company, Central Pacific Resources, Two Bay Petroleum, Shaefer Oil Company, E. W. Dodge Oil Company, and Castle Resources, Inc.

A revised Oil and Gas Programmatic Biological Opinion (BO) was issued to BLM on September 28, 2001, by the United States Fish and Wildlife Service (USFWS). This BO addresses certain small scale projects associated with BLM's oil and gas leasing and development within the Bakersfield Office. The purpose of this BO was to consolidate the federal endangered species consultation process on certain small scale projects that would have relatively small impacts to species listed as threatened or endangered under the Federal Endangered Species Act (FESA).

Because of the potential for BLM's oil and gas activities to take species protected by FESA, a Programmatic BO was first issued to BLM on July 10, 1996. On February 16, 2001, BLM requested a revision and extension of the formal consultation with USFWS. On September 28, 2001, a revised BO (1-1-01-F-0063) was issued to BLM. On May 21, 2003, BLM requested that the Programmatic BO be extended to include the 10,466 acres within the Naval Petroleum Reserve 2 (NPR2) in western Kern County, in anticipation of the pending transfer of NPR2 from Department of Energy (DOE) to BLM. On May 19, 2005, an amendment to the Programmatic BO (1-1-03-F-0295) was issued from USFWS to BLM. NPR2 was finally transferred from DOE to BLM in the Domenici-Barton Energy Policy Act of 2005, which was signed by President George W. Bush on August 8, 2005. Proposed BLM and third party actions on NPR-2 lands will be similar in scope to those issues already outlined in the Programmatic BO and all conservation measures addressed in the September 28, 2001 Programmatic BO will be followed on actions authorized at NPR-2. The Programmatic BO and 2005 amendment describe project actions and measures to mitigate impacts to the San Joaquin kit fox (*Vulpes macrotis mutica*), giant kangaroo rat (*Dipodomys ingens*), Tipton kangaroo rat (*Dipodomys nitratooides nitratooides*), blunt-nosed leopard lizard (*Gambelia sila*), California jewel flower (*Caulanthus californicus*), San Joaquin woolly-threads (*Lembertia congdonii=Monolopia congdonii*), Kern mallow (*Eremalche kernensis*), Hoover's woolly-star (*Eriastrum hooveri*), and Bakersfield cactus (*Opuntia basilaris*) and their habitat(s). San Joaquin kit fox is also listed as a threatened species under the California Endangered Species Act (CESA), Fish and Game Code Section 2050 et seq., and Tipton kangaroo rat, giant kangaroo rat, blunt-nosed leopard lizard, California jewel flower, and Bakersfield cactus are listed as an endangered species under CESA. The blunt-nosed leopard lizard is also a fully protected species under California Fish and Game Code, Section 5050. The Department of Fish and Game (DFG) attends the Oil and Gas Work Group, a collaborative effort by the Department of Conservation's Division of Oil, Gas,

and Geothermal Resources (DOGGR), BLM, Oil Industry, and other state and federal agencies. On November 17, 2005, the Director of DFG received a request from Ron Huntsinger, representing BLM, that DFG find the Programmatic BO consistent with CESA pursuant to Section 2080.1 of the Fish and Game Code.

The Programmatic BO authorizes individual projects disturbing less than 10 acres of habitat or linear actions less than 10 miles long. Implementation of projects under the BO will result in the annual estimated loss of 690 acres of habitat, 80 percent of which (575 acres) will occur on previously disturbed lands and 20 percent (115 acres) of which will be new surface disturbance. Previously disturbed lands are defined as areas of little to no habitat value, because the soil surface is chronically disturbed, has been scraped bare or otherwise altered, and, thus, supports little to no vegetation. Previously disturbed lands include such areas as roads, road shoulders, parking areas, well pads, tank settings, storage areas, pipeline corridors, sumps, intensive agricultural areas, and residence and facility grounds. Not all new surface disturbance will result in take of habitat occupied by species listed under CESA. BLM can authorize actions under the Programmatic BO so long as the cumulative amount of new surface disturbance remains below the annual limit allowed by the BO, and no carryover of newly disturbed or prior disturbed lands is allowed as credit for subsequent years. The term of the BO is 15 years. The total amount of take allowed, with the May 2005 amendment to the BO is as follows: the annual limit on new surface disturbance is 140 acres. BLM will authorize or undertake actions under the Programmatic BO so long as the cumulative amount of new surface disturbance is below the annual limit or, if applicable, the programmatic limit. If in any given year the annual limit is reached, the BLM will contact the USFWS before proceeding with additional actions. There will be no carryover of surface disturbance from year to year, unless the surface disturbance is specifically quantified as a programmatic limit. The annual amount of take allowed as a result of San Joaquin kit fox natal den destruction is zero (0) San Joaquin kit fox. The annual amount of injury or mortality allowed as a result of trapping activities associated with capture is two (2) giant kangaroo rats, and two (2) Tipton kangaroo rats. The annual amount of take allowed as a result of project related activities that result in injury, harm, and direct mortality is one (1) San Joaquin kit fox, twelve (12) acres of giant kangaroo rat habitat and, if individuals are present then, the individuals therein, and ten (10) acres of Tipton kangaroo rat habitat and, if individuals are present then, the individuals therein.

Under the BO, disturbance levels, general and individual species survey requirements, and mitigation and mitigation requirements are dictated by action location, which relates to covered species habitat quality. Surface disturbance on BLM lands in "Red Zones" (Threatened and Endangered Management Areas) will not exceed 10 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections. Surface disturbance on BLM lands in Green Zones (Habitat Linkage areas) will not exceed 25 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections. Projects that would disturb greater than 10 percent or 25 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections in Red and Green zones, respectively, would be subject to a separate section seven consultation.

For impacts to Red or Green Zone areas in Kern and Kings Counties, mitigation will be at a ratio of 3:1 for permanent impacts and 1.1:1 for temporary impacts to previously undisturbed habitat. Previously undisturbed habitat includes habitat previously disturbed that has been restored to a natural state. A temporary impact is a short term event whose effects are relaxed almost immediately or within a short period (2 years) after the event. For impacts to protected lands (such as Federal lands, State wildlife areas, conservation banks, Lokern Area), a replacement component will be added to the mitigation ratios. For example, if a project is implemented in the Lokern Area, the project proponent will replace the impacted habitat at a 1:1 ratio, and then mitigate at a 3:1 ratio, bringing the total mitigation ratio to 4:1. Mitigation of habitat must be in kind, meaning that the land used for mitigation must be of equal value or better than the land impacted. The same species must be present and habitat of an equal or greater value. If a project impacts occurs in a Red Zone, the mitigation land must also be in a Red Zone. Similarly, impacts to a kit fox natal den must be mitigated with land that supports breeding populations of kit foxes. Lands used for mitigation for project impacts to Kern mallow, San Joaquin woolly-threads, and the kangaroo rats must be known to currently support these species.

Prior to any surface disturbance, ownership of mitigation lands shall be transferred to any of the following: BLM; an entity acceptable to BLM, USFWS, and DFG that can effectively manage listed species and their habitats; DFG; or USFWS for dedication to listed species habitat management. USFWS shall be informed prior to the actual transfer when land shall be transferred.

At the discretion of BLM, the project applicant may provide a letter agreeing to dedicate existing mitigation credits or purchase additional mitigation credits at a USFWS-approved mitigation bank. A preliminary

estimate of mitigation acres shall be provided to the applicant by BLM. The final mitigation acreage will be adjusted upon completion of construction based on the actual amount of acreage temporarily and permanently disturbed.

USFWS is currently conducting a habitat analysis to determine if mitigation ratios for threatened and endangered San Joaquin Upland Species have been adequately protecting these species. If new mitigation ratios become established for Kern County, the BLM will annually meet with USFWS to determine if the mitigation ratios in the Programmatic BO should be modified accordingly.

Areas pre-approved to serve as mitigation areas include; Lokern Road Area, Buena Vista Valley, Semitropic Ridge, Allensworth, Kettleman Hills, Kern Water Bank, Carrizo Plain Natural Area, or any Specialty Preserve agreed to by the BLM and the USFWS. Habitat linkage areas and small specialty preserves determined by the BLM, DFG, and USFWS to be important for species conservation and recovery shall be acceptable as mitigation habitat. Coles Levee Ecosystem Reserve has historically served as a mitigation area. However, with the recent changes in ownership, the long-term viability of the bank may change. This situation shall be monitored and approval for use as mitigation may be curtailed.

DETERMINATION

Based on the terms and conditions in the Programmatic BO (1-1-01-F-0063) and 2005 amendment (1-1-03-F-0295), DFG has determined that the Project is consistent with CESA for the San Joaquin kit fox, giant kangaroo rat, Tipton kangaroo rat, California jewel flower, San Joaquin woolly-threads, Kern mallow, Hoover's woolly-star, and Bakersfield cactus because the Project and mitigation measures meet the conditions set forth in Fish and Game Code Section 2081 (b) and (c) for authorization of incidental take of species protected under CESA. It is the Department's determination that the Programmatic BO is **not consistent with the California Endangered Species Act for the blunt-nosed leopard lizard**. Section 5050 of the Fish and Game Code prevents the Department from authorizing incidental take of the blunt-nosed leopard lizard pursuant to the California Endangered Species Act, so no form of take of this species is allowed under state law.

Important to DFG's findings are several measures from the Programmatic BO and amendment that address expected or potential impacts to San Joaquin kit fox, Tipton kangaroo rat, giant kangaroo rat, California jewel flower, and Bakersfield cactus. These include, but are not limited to, the following:

9. For impacts to habitat, mitigation shall be at a ratio of 3:1 for permanent impacts and 1.1:1 for temporary impacts to previously undisturbed habitat.
10. Surface disturbance on BLM lands in Red Zones shall not exceed 10 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections; surface disturbance on BLM lands in Green Zones shall not exceed 25 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections; and projects that would disturb greater than 10 percent or 25 percent of any 640-acre section, aliquot section, or aggregate of adjacent aliquot sections in Red and Green zones, respectively, would be subject to a separate section 7 consultation.
11. Threatened and Endangered Management Areas and Habitat Linkages shall be presumed to be occupied habitat for listed animal species. Wildlife surveys shall determine listed species presence and/or important habitat features for listed species. Surveys shall be conducted within 30 days prior to the ground disturbing activities (with the exception of High Density Oilfields such as Midway Sunset and Lost Hills, although wildlife avoidance measures are still required).
12. San Joaquin kit fox dens shall be protected to the maximum extent practicable. Known, occupied, and potential non-natal dens shall be buffered by 100 feet. Unoccupied natal dens shall be buffered by 200 feet to protect the physical den site.
13. If kit fox dens cannot be avoided, non-natal dens within a construction area may be excavated at any time of the year by USFWS-approved biologists or under the supervision of a USFWS-approved biologist. Prior to the destruction of the den, the den shall be monitored for at least three consecutive days to determine its current status.
14. Pipes and culverts shall be searched for kit fox prior to being moved or sealed, to ensure that kit foxes shall not be entrapped. Any kit fox found shall be allowed to escape unimpeded. Pipes and culverts with a diameter of 4 inches or greater shall be capped or taped closed after searching them.
15. Active giant kangaroo rat precincts (burrow complexes) and Tipton kangaroo rat burrows shall be avoided by a buffer of 50 feet. Actions within the buffer zone shall be limited to vehicle and equipment operation on existing roads. Actions within buffer zones shall be confined to daylight hours.
16. If active giant kangaroo rat precincts or Tipton kangaroo rat burrows cannot be avoided, the area shall be trapped no longer than 7 days prior to

- ground disturbing activities for five consecutive nights. On the day following the fifth trap night, burrows shall be carefully excavated. Captured animals shall be marked and may be released into enclosed artificial burrow systems outside the work area the following night. All work shall be supervised by a USFWS-approved biologist.
17. For listed annual plant species, surveys shall be conducted during the appropriate season in the area to be disturbed by the project and a 50-foot buffer. Reconnaissance level surveys shall also be conducted to determine habitat suitability using meandering walk-over surveys. No plant surveys are required in High Density Oilfields (such as Midway Sunset and Lost Hills) and no species specific measures are required.
 18. Extant listed annual plant populations shall be avoided to the greatest extent practicable. The locations of listed plants shall be avoided and temporarily fenced or prominently flagged to prevent inadvertent encroachment by vehicles and equipment. If extant populations cannot be avoided, surface disturbance should be scheduled after seed set and prior to germination. Collection of seed, with reseeding undertaken at the site following the activity, during seasonal timeframes and weather conditions favorable for germination and growth, may also be required. Topsoil may be stockpiled and replaced after project completion.
 19. Impacts to extant listed annual plant populations may be considered minimized when: (a) the number of plants lost is cumulatively less than 3 percent of the impacted population and disturbance is temporary, or (b) the amount of habitat lost is cumulatively less than 3 percent of the occupied habitat for the impacted population.
 20. Herbicide use shall not be permitted within 300 feet of listed plant populations identified during pre-project surveys.
 21. No extant natural populations of California jewel flower are known from Kern or Kings Counties. If California jewel flower populations and individuals are discovered in these counties, they shall be avoided by a 50-foot buffer.
 22. The perennial Bakersfield cactus is known to occur on one section of split estate land within the Green Zone. Bakersfield cactus is not known to occur elsewhere in either the Red or Green Zones. Project sites shall be surveyed for cactus in any potential habitat using meandering walk-over surveys. If additional Bakersfield cactus populations and individuals are discovered, they shall be avoided by a 50-foot buffer in all areas where they are located.
 23. Habitat disturbance shall be minimized and conducted in a manner that reduces, as much as possible, the potential for direct take of listed species. Existing roads and routes of travel shall be used to the greatest extent practical. Natural drainage patterns shall be maintained to the greatest extent practical.
 24. Large draws and drainages with saltbush shall be avoided to the greatest extent practical.
 25. The area of disturbance shall be reduced to the smallest practical area, considering topography, placement of facilities, location of burrows, nesting sites or dens, public health and safety, and other limiting factors. Work area boundaries shall be delineated with flagging, temporary fencing or other marking to minimize surface disturbance. To the extent practical, previously disturbed areas shall be used to stockpile excavated materials, storage of equipment, digging of slurry and borrow pits, locations of trailers, parking of vehicles, and other surface-disturbing actions. All oil spills shall be contained closest to the source site as possible. BLM/applicant shall notify the USFWS within 48 hours of any oil spill.
 26. The use of all terrain vehicles (ATVs) shall be considered for projects that require cross-country travel (such as project survey staking, geophone placement and retrieval).
 27. Project employees shall be directed to exercise caution when commuting within listed species habitats. A 25 MPH speed limit shall be required on unpaved roads within listed species habitat.
 28. Cross-country travel by vehicles shall be prohibited, unless authorized by BLM. In previously unsurveyed areas, biological monitors shall be required for routing cross-country travel to minimize impacts to habitat features.
 29. Project employees shall be provided with written guidance governing vehicle use restrictions, speed limits on unpaved roads, and fire prevention and hazards.
 30. A worker education program shall be conducted for all employees working on the project sites in listed species habitats. The education program shall include identification of listed species and their habitats, project mitigation measures and stipulations, reporting requirements, and penalties for failure of compliance.
 31. Activities during evening hours (when some listed species are active and vulnerable to vehicle or equipment-induced injury or mortality) shall be minimized.
 32. Trash and food items shall be contained in closed containers and removed daily.

33. Firearms shall be prohibited from project sites.
 34. Open pipeline trenches shall have earthen escape ramps maintained at intervals no greater than 1,000 feet and at a slope no greater than 1:1. Trenches shall be checked in the morning before beginning work and at the end of the work day. Any entrapped animals shall be allowed to escape unharmed.
 35. Pets shall not be permitted on construction project sites.
 36. Each project shall have a field contact representative (FCR), who shall be responsible for overseeing compliance with protective stipulations for listed species. The FCR may be a project manager, project representative, BLM employee, or contract biologist. The FCR shall have the authority to halt all actions that are in violation of the stipulations. The FCR shall have a copy of all appropriate stipulations when surface disturbing actions are being conducted on the site. BLM and USFWS shall be notified of the name and telephone number of the FCR prior to project construction.
 37. If biological issues have been identified for a project, a biological monitor(s) may be required to minimize project impacts. Biological monitoring shall be accomplished by a USFWS-qualified biologist. The biologist shall be responsible for field crews to be in compliance with protection measures, performing surveys in front of crews as needed to locate and avoid sensitive species and habitat features, and monitoring project mitigation compliance. Biological monitors shall be required to be present on site during initial surface disturbing actions to minimize direct take of listed species. At the discretion of BLM/USFWS, on-site biological monitors may not be required if exclusion zones and/or surface disturbance areas are prominently marked with lath, flagging or fencing, as necessary. If biological monitors are required, BLM shall determine and shall so state in BLM's authorizations. The biological monitor shall have the authority to halt all non-emergency actions should danger to a listed species arise. Work shall proceed only after hazards to the listed species are removed, the individual(s) is no longer at risk, or the individual(s) has been removed by the biologist.
 38. Biological monitors shall be required for kit fox den excavations.
 39. Within 24 hours notice from the applicant, BLM or USFWS, biological monitors shall be available on site to troubleshoot potential take situations.
 40. Biological monitors may be required, if upon project inspection by the BLM, DFG, or USFWS, noncompliance of project stipulations are observed and documented.
 41. Within 60 days of completion of construction, a brief post-construction compliance report shall be required to be provided to BLM that addresses: any revision to habitat disturbance estimates; any observed impacts to listed species, including incidental take; a brief description of significant actions taken to comply with the required avoidance and minimization measures; and an overall evaluation of compliance with the provisions and suggestions for changes to the provisions.
 0. Restoration shall be required on unused portions of any project area or oil and gas lease when deemed necessary by BLM to maintain or improve habitat values. Restoration shall be required when a project or lease is abandoned.
- Pursuant to Section 2080.1 of the Fish and Game Code, no further authorization under CESA is required for incidental take of San Joaquin kit fox, Tipton kangaroo rat, giant kangaroo rat, California jewel flower, or Bakersfield cactus resulting from this Project, provided the Project is implemented as described in the Programmatic BO and 2005 amendment. If there are any substantive changes to the Project as described in the BO or 2005 amendment, including changes to the mitigation measures, or if the USFWS amends or replaces the BO, BLM shall need to obtain a new Consistency Determination or a CESA Incidental Take Permit from the DFG. Fish and Game Code § 5050 requires that all take of blunt-nosed leopard lizard be avoided while carrying out project activities. BLM and the companies conducting activities covered by the BO are encouraged to consult with DFG regarding take avoidance measures for the blunt-nosed leopard lizard.
- DFG requests that BLM provide copies of all annual reports, other monitoring reports, and other circulated materials relevant to the Project's effects on San Joaquin kit fox, Tipton kangaroo rat, giant kangaroo rat, blunt-nosed leopard lizard, California jewel flower, or Bakersfield cactus to DFG at the following address or at any substitute location that DFG may subsequently identify.
- San Joaquin Valley and Southern Sierra Region
Department of Fish and Game
1234 East Shaw Avenue
Fresno, California 93710

**DEPARTMENT OF
FISH AND GAME**

CONSISTENCY DETERMINATION

Fish and Game Code Section 2080.1

Tracking Number 2080-2005-029-01

PROJECT: Stonecreek Residential Development Project

LOCATION: Shasta County, California

NOTIFIER: Gallaway Consulting, Inc. on behalf of Schellinger Brothers Homes

BACKGROUND

Schellinger Brothers Homes is proposing a 157-unit residential development on approximately 50.4 acres in the City of Redding, Shasta County. As proposed, the project includes placement of fill material into 1.942 acres of vernal pools of which 0.216 acre is inhabited by slender Orcutt grass (*Orcuttia tenuis*), a species which is listed as endangered under the California Endangered Species Act (CESA).

Because of the project's potential to take a species protected by the Federal Endangered Species Act (ESA), on March 11, 2005, the Sacramento Office of the U.S. Fish and Wildlife Service (USFWS) issued to the U.S. Army Corps of Engineers, a "no jeopardy" biological opinion (BO) and incidental take statement (ITS) (1-1-04-F-0313) which describe the project actions and set forth measures to mitigate impacts to state endangered and federally threatened slender Orcutt grass. On November 17, 2005, the Director of the Department of Fish and Game (DFG) received a notice from Gallaway Consulting, Inc. on behalf of Schellinger Brothers Homes, pursuant to Section 2080.1 of the Fish and Game Code, requesting a determination that the BO and ITS are consistent with CESA.

DETERMINATION

DFG has determined that the Federal BO and ITS (1-1-04-F-0313) are consistent with CESA because the project and mitigation measures described meet the conditions set forth in Fish and Game Code Section 2081(b) and (c) for authorization of incidental take of listed species. As part of this determination, DFG finds that the take of slender Orcutt grass will be incidental to an otherwise lawful activity (development of a residential subdivision); the mitigation measures identified in the BO and ITS will fully mitigate the impacts of the authorized take of slender Orcutt grass; and the project will not jeopardize the continued existence of this species.

The BO indicates that the project proponent considered several project alternatives to reduce and/or avoid impacts to the wetland containing slender Orcutt grass. However, the project proponent con-

cluded that with the planned development of the area, indirect effects from the changes in hydrology would likely result in the eventual loss of the slender Orcutt grass population. Thus, the BO concluded the project applicant has no ability to avoid the take of the slender Orcutt grass.

The mitigation measures contained within the BO and ITS include but are not limited to the following:

1. The project proponent will purchase a minimum of 1.08 slender Orcutt grass preservation acres to be dedicated within a Service-approved ecosystem vernal pool preservation bank serving the proposed project area (5:1 ratio).
2. The project proponent will also purchase a minimum of 1.08 slender Orcutt grass creation acres within a Service-approved ecosystem vernal pool preservation bank serving the proposed project area (5:1 ratio).

Pursuant to Section 2080.1 of the Fish and Game Code, no incidental take authorization under CESA will be required for incidental take of slender Orcutt grass during the project as it is described in the biological opinion, provided Schellinger Brothers Homes complies with the mitigation measures and other conditions described in the biological opinion and incidental take statement. If there are any substantive changes to the project including changes to the mitigation measures or if USFWS amends or replaces the biological opinion, Schellinger Brothers Homes will be required to obtain a new consistency determination or CESA incidental take Permit from the Department.

**FAIR EMPLOYMENT AND
HOUSING COMMISSION**

**TITLE 2, SECTION 7288.0—HARASSMENT
TRAINING AND EDUCATION**

Notice published December 16, 2005

NOTICE OF CORRECTION

The California Fair Employment and Housing Commission ("Commission") makes the following typographical corrections to its NOTICE OF PROPOSED RULEMAKING, OAL file number Z-05-1205-01, published in the Office of Administrative Law's December 16, 2005 Notice Register. On the first page of the Commission's Notice of Proposed Rulemaking, the dates for the two public hearings on the Commission's proposed regulations should be corrected to state that each of its hearings will occur in February 2006, not February 2005. Similarly, the written comment period closes Febru-

ary 10, 2006, not February 10, 2005. The Commission has corrected this information on its website at www.fehc.ca.gov.

Inquiries concerning the proposed administrative action may be directed to:

Ann M. Noel
Acting Executive and Legal Affairs Secretary
Fair Employment and Housing Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
Telephone: (415) 557-2325
Facsimile: (415) 557-0855
regs@fehca.ca.gov

RULEMAKING PETITION DECISIONS

DEPARTMENT OF INSURANCE

DENIAL OF PETITION FOR RULEMAKING (Government Code § 11340.7)

By letter dated August 9, 2005, Sharon J. Arkin, as President, and Frank M. Pitre, as President-Elect, of the Consumer Attorneys of California ("Petitioners") petitioned the Insurance Commissioner of the State of California (the "Commissioner") requesting adoption of a regulation. The Petitioners sought to have the Commissioner promulgate a regulation to require insurers to give testimony under oath in rate-making deliberations, in rulemaking hearings, and in market conduct examination and consumer complaint reviews. Further, anyone providing information in these circumstances would have been required to certify also that she was not failing to disclose a pertinent fact. The Commissioner denied the petition in a decision published in the California Regulatory Notice Register on September 9, 2005 (the "Decision").

By email messages dated November 14, 2005 John Metz, an individual, requested reconsideration of the Decision. This request for reconsideration is referred to hereinafter as the "Petition."

Notice is hereby given that the Commissioner denies the Petition for the reasons set forth below.

PROVISIONS OF THE CODE OF REGULATIONS REQUESTED TO BE AFFECTED

Title 10, California Code of Regulations, Chapter 5.

AUTHORITY AND REFERENCE CITED

The petition dated August 9, 2005 cited California Insurance Code sections 790.10, 1861.02(e) and 14013.

REASONS SUPPORTING THE DEPARTMENT'S DETERMINATION

Petitioners stated that California Insurance Code sections 790.10, 1861.02(e) and 14013 provide authority for the Commissioner to promulgate the requested regulation. Mr. Metz cites no additional statutory authority for the rulemaking in question.

As stated in the Decision, Section 790.10 provides the Commissioner with the authority to promulgate reasonable rules and regulations as necessary to administer Division 1, Part 2, Chapter 1, Article 6.5 of the Insurance Code, Unfair Practices. Section 1861.02(e) provides the Commissioner with the authority to promulgate regulations implementing rate regulation and determination of rates. Section 14013 provides the Commissioner with the authority to adopt and enforce reasonable rules pertaining to adjusters. The Petitioners were denied, as the rulemaking they advocated would fail to meet the authority and necessity standards required by Government Code section 11349.1.

As stated in the Decision, Government Code section 11342.1 requires that each regulation adopted by state agency be within the scope of authority conferred upon the agency. Government Code section 11342.2 requires that a regulation be reasonably necessary to effectuate the purpose of the statute.

Petitioners indicated that the regulation they urged the Commissioner to promulgate is necessary because, they claimed, the current system is inherently unreliable, unfair to consumers and potentially damaging to licensees who are truthful and forthright. However, Petitioners failed to provide any specific evidence that would demonstrate the existence of any such unfairness, lack of reliability or potential harm in this State.

Mr. Metz also fails to provide such specific evidence, with the exception of a series of newspaper accounts of hearings held 2003 by the Florida legislature on the subject of medical malpractice insurance. The Commissioner does not find these accounts sufficiently compelling to warrant the diversion of Department resources that would be required in order to seek to promulgate the regulations as urged. The Commissioner does not dispute Mr. Metz's generalizations to the effect that licensees have on occasion provided false or misleading information or failed to disclose material information. However, with one exception as noted above, Mr. Metz does not cite specific evidence in support of his assertions.

As stated in the Decision, the Department of Insurance does not have rulemaking authority to promulgate a regulation governing its rulemaking hearings. Rulemaking procedures are set out in the Government Code, and any attempt to specify in a regulation rulemaking procedures to be followed by the Department would be beyond the scope of the

rulemaking authority granted to the Department, which does not generally have authority to promulgate regulations interpreting the Government Code. Mr. Metz does not cite any provision of law that would provide the Department with the requisite rulemaking authority.

With regard to the consumer complaint process, Insurance Code section 790.03 to a great extent addresses Petitioners' concerns. In administrative proceedings pursuant to this statute, testimony is already required to be given under oath. Petitioners have not indicated how the requested regulation is necessary to administer the Unfair Practices Act. Though the email messages sent by Mr. Metz quote sizable tracts of statutory language, Mr. Metz like Petitioners fails to specify exactly how it is that the Unfair Practices Act allegedly cannot be administered absent the suggested regulations.

The Commissioner is not in principle opposed to the concept of requiring information to be submitted under oath. However, the rulemaking process is not an effective, or an efficient, means of bringing about the change in law which Petitioners and Mr. Metz seek. Accordingly the Petition is denied.

AGENCY CONTACT PERSON

George Teekell, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st floor
San Francisco, CA 94105

OBTAINING COPIES OF THE PETITION

Interested persons have a right to obtain a copy of the Petition for Rulemaking and may do so by requesting a copy from the Agency Contact Person.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

NOTICE OF INTENT TO LIST CHEMICALS

Extension of Public Comment Period
December 30, 2005

[Extension Notice was posted on the
OEHHA web site on December 15, 2005]

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) requires the Governor to publish, and update at least annually, a list of chemicals known to the State to cause cancer or

reproductive toxicity. The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of Proposition 65.

On November 18, 2005, OEHHA published a notice in the *California Regulatory Notice Register* (Register 05, No. 47-Z) announcing its intent to list 2,4-D (2,4-dichlorophenoxy) acetic acid and certain related compounds under Proposition 65 as chemicals known to the state to cause reproductive toxicity in accordance with the regulatory criteria in Section 12306 of Title 22 of the California Code of Regulations. The publication of the notice initiated a 30-day public comment period which would have closed on December 19, 2005. OEHHA has received requests from interested parties seeking an extension of the comment period to allow for the submission of complete and relevant scientific information. OEHHA hereby extends the public comment period for (2,4-dichlorophenoxy) acetic acid; 2,4-D n-butyl ester; 2,4-D isopropyl ester; 2,4-D isooctyl ester; propylene glycol butyl ether ester (of 2,4-D); 2,4-D butoxyethanol ester; and 2,4-D dimethylamine salt for 45 days to 5 p.m., **Thursday, February 2, 2006.**

Written comments provided in triplicate, along with supporting information, may be submitted to:

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
Street Address: 1001 I Street
Sacramento, California 95814
Mailing Address: P.O. Box 4010
Sacramento, California 95812-4010
Fax No.: (916) 323-8803
Telephone: (916) 445-6900

Comments may also be delivered in person or by courier to the above address. It is requested, but not required, that written comments and supporting documentation be transmitted via email addressed to: coshita@oehha.ca.gov. In order to be considered, comments must be postmarked (if sent by mail) or received at OEHHA (if hand-delivered, sent by FAX, or transmitted electronically) by 5:00 p.m. on Thursday, February 2, 2006.

DISAPPROVAL DECISIONS

DECISIONS OF DISAPPROVAL OF REGULATORY ACTIONS

Printed below are the summaries of Office of Administrative Law disapproval decisions. Disapproval decisions are available at www.oal.ca.gov. You may also request a copy of a decision by contacting the

Office of Administrative Law, 300 Capitol Mall, Suite 1250, Sacramento, CA 95814-4339, (916) 323-6225—FAX (916) 323-6826. Please request by OAL file number.

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

DECISION OF DISAPPROVAL OF REGULATORY ACTION

(Gov. Code, sec. 11349.3)

Title 22,

California Code of Regulations

OAL File No. 05-1027-05 S

AMEND: 12805

DECISION SUMMARY

This action establishes the Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 “No Observable Effect Level” (NOEL) on reproductive toxicity for Di(2-ethylhexyl) phthalate (DEHP). This action sets the NOEL for intravenous exposure to DEHP for “adults”, “infant boys”, and “neonatal boys”.

On December 13, 2005, the Office of Administrative Law (“OAL”) disapproved the proposed amendment of the above-cited section in Title 22, California Code of Regulations (“CCR”) for failing to comply with the “clarity” standard and for failing to follow the procedures required by the Administrative Procedure Act (“APA”)

CONCLUSION

For the reasons set forth above, OAL disapproves this amendment of section 12805 of Title 22 of the CCR. If you have any questions, please contact me at (916) 323-8915.

Gordon R. Young
Senior Staff Counsel

For:

WILLIAM L. GAUSEWITZ
Director

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of

State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

ACUPUNCTURE BOARD

Single Use Needles

This regulation requires all acupuncturists to use only single-use needles.

Title 16

California Code of Regulations

ADOPT: 1399.454 AMEND: 1399.434, 1399.436, 1399.450, 1399.451

Filed 12/15/05

Effective 12/15/05

Agency Contact: Janelle Wedge (916) 445-1995

CALIFORNIA GAMBLING CONTROL COMMISSION

Additional Tables

This regulatory action is to provide a mechanism in new section 12359 by which a gambling establishment may request authorization for additional permanent tables. The application fee for gambling tables is set by statute, Business and Professions Code section 19951(a). This action had also included new section 12358 which provided a mechanism to request additional tables on a temporary basis for tournament and special events, but the section dealing with that mechanism was withdrawn.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code.

Title 4

California Code of Regulations

ADOPT: 12359

Filed 12/21/05

Effective 01/01/06

Agency Contact:

Heather Cline-Hoganson (916) 274-6328

CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY

Community Clinic Grant Program of 2005

This emergency rulemaking corrects the information required for the grant program. (Previous OAL file # 05-1116-02E)

Title 4

California Code of Regulations

AMEND: 7075, 7082, 7084, 7092, 7093, 7094, 7098

Filed 12/14/05

Effective 12/14/05

Agency Contact: Ray Artinian (916) 653-3841

CALIFORNIA HOUSING FINANCE AGENCY

Board Procedure; Multifamily; Mortgage and Bond Insurance

This action repeals obsolete regulations of the Board, eliminates the requirement of Board certification of the qualification of housing sponsors, and changes the threshold for major contractual obligations that require Board approval so that the Executive Director can enter into more contracts on behalf of the Board.

Title 25

California Code of Regulations

ADOPT: 11101, 13302 AMEND: 19200, 19201, 19202, 19203, 19204, 19205, 19206, 19207, 19300, 19301, 19400

Filed 12/19/05

Effective 12/19/05

Agency Contact: Misty Miller (916) 445-0178

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Segregated Housing

This Certificate of Compliance file adopts permanently the emergency regulations changing the schedule under which inmates assigned to administrative segregation will have their status reviewed. Prior rules required a hearing to review the status not less than every 30 days. This rule requires an initial hearing within 10 days, followed by review hearings at intervals of not more than 90 days for violations in the less serious categories and not more than 180 days for violations categorized as more serious.

Title 15

California Code of Regulations

AMEND: 3335

Filed 12/15/05

Effective 12/15/05

Agency Contact: John McClure (916) 358-1655

DEPARTMENT OF JUSTICE

Motor Vehicles Bond Form

The Department of Justice is amending section 51.12, title 11, California Code of Regulations, pertaining to the Undocumented Vessel Surety Bond (California Vehicle Code section 9923), which was filed with the Secretary of State's Office December 15, 2005 and refiled December 19, 2005 to attain the effective on filing status.

Title 11

California Code of Regulations

AMEND: 51.12

Filed 12/15/05

Effective 01/14/06

Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF MANAGED HEALTH CARE

Financial Solvency Definitions

This Title 1 CCR section 100 "change without regulatory effect" corrects two typographical errors in

the Department's definition of the phrase "in a manner that does not adversely affect the integrity of the contract negotiation process" contained in Health and Safety Code section 1375.4(a)(1).

Title 28

California Code of Regulations

AMEND: 1300.75.4

Filed 12/14/05

Effective 12/14/05

Agency Contact:

Phoenix R. Vigil (916) 445-4078

DEPARTMENT OF MOTOR VEHICLES

Two-Year Term Occupational License Renewal

Veh. Code section 1665 authorizes Dept. of Motor Vehicles to provide for the issuance or renewal of licenses or other indicia of authority on a two-year basis, instead of the current annual basis, and to set the related fees not to exceed twice the annual fee for issuance or renewal set by statute.

Proposed 13 CCR 253.02 establishes a staggered, two-year term for licenses held by the following occupational type: All-Terrain Vehicle Safety Organization, Dealer, Dismantler, Distributor, Driving School Owner, Lessor-Retailer, Manufacturer, Registration Service, Re-manufacturer, Traffic Violator School Owner, and Transporter. Licensees with an even-year date-in-business will begin in 2006. Odd year date-in-business licensees will begin in 2007. Two-year term licenses will be issued to new licensees starting in 2006. These staggered licensee renewal dates will allow the department to effectively control the annual volume of applications received by the department for processing, resulting in uniform workloads and increased oversight of the licensing programs.

13 CCR 345.16 is being amended to incorporate fees and licensing terms for traffic violator school owners into new section 253.02 by deletion of these provisions from 345.16.

These regulations will be filed effective January 1, 2006 to coincide with the beginning of the new occupational licensing and fee provisions.

Title 13

California Code of Regulations

ADOPT: 253.02 AMEND: 345.16

Filed 12/16/05

Effective 01/15/06

Agency Contact: Randi Calkins (916) 657-8898

DEPARTMENT OF PERSONNEL

ADMINISTRATION

Substance Abuse

In this regulatory action, the Department of Personnel Administration amends its "substance abuse" regulations pertaining to drug and alcohol testing of California State employees to provide that

certain peace officer employees under Penal Code section 830.2(d) are subject to random and reasonable suspicion drug and alcohol testing.

Title 2
California Code of Regulations
AMEND: 599.960, 599.961
Filed 12/21/05
Effective 01/20/06
Agency Contact: Sydney Perry (916) 324-2763

DEPARTMENT OF PESTICIDE REGULATION
Sulfuryl Fluoride

In this regulatory action, the Department of Pesticide Regulation designates the pesticide "sulfuryl fluoride" as a state "restricted material" generally subject to the requirement of a permit from the local county agricultural commissioner prior to possession or use.

Title 3
California Code of Regulations
AMEND: 6400
Filed 12/15/05
Effective 12/15/05
Agency Contact:
Linda Irokawa-Otani (916) 445-3991

DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

Financial Responsibility Requirements, subpart H

This rulemaking revises regulations governing financial responsibility requirements for owners and operators of hazardous waste treatment, storage and disposal facilities to parallel revised federal regulations. Because this action conforms to federal law, it is deemed nonsubstantive pursuant to Health & Safety Code section 25159.1.

Title 22
California Code of Regulations
ADOPT: 66264.151 AMEND: 66264.115,
66264.120, 66264.143, 66264.145, 66264.147,
66265.115, 66265.120, 66265.143, 66265.145,
66265.147, 67450.13, 67450.30, 67450.49
Filed 12/19/05
Effective 12/19/05
Agency Contact: Joan Ferber (916) 322-6409

FAIR POLITICAL PRACTICES COMMISSION
Affirmative Defense—Public Generally—Legally
Required Participation

This action amends existing provisions dealing with "Basic Rule; Guide to Conflict of Interest Regulations", "Public Generally" and "Legally Required Participation".

Title 2
California Code of Regulations
AMEND: 18700, 18707, 18708

Filed 12/20/05
Effective 01/19/06
Agency Contact:
Emelyn Rodriquez (916) 322-5660

FISH AND GAME COMMISSION
Commercial Herring Fishery

This action continues the current minimum size of gill nets in the herring fishery in Tomales Bay for another season, reduces the mesh size of nets for San Francisco Bay, increases quotas for the allowable take from San Francisco Bay, sets the duration of the season for these two fisheries, and reduces the fee required for transfer of a commercial herring fishing permit.

Title 14
California Code of Regulations
ADOPT: 163.1 AMEND: 163, 164
Filed 12/19/05
Effective 12/19/05
Agency Contact: Jon Snellstrom (916) 653-4899

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD
Heat Illness Prevention

Readoption of emergency rule requiring employers to provide shade and water to employees who work in hot outdoor workplaces and requires employers and employees to have training in various aspects of heat injury prevention.

Title 8
California Code of Regulations
AMEND: 3395
Filed 12/20/05
Effective 12/20/05
Agency Contact: Marley Hart (916) 274-5721

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Access to the Walking Beam

This is an editorial correction to a typographical error changing the reference to the General Industry Safety Order from Section 5400 to 5004.

Title 8
California Code of Regulations
AMEND: 6632(f)
Filed 12/14/05
Effective 12/14/05
Agency Contact: Marley Hart (916) 274-5721

STATE WATER RESOURCES CONTROL BOARD
Remove MUN Beneficial Use of Owens Lake

This regulatory action will remove the Municipal and Domestic Supply (MUN) beneficial use designation from most surface waters of Owens Lake. MUN is not an existing or foreseeable use of these waters due to very high concentrations of salts and toxic

substances such as arsenic that exceed state and federal standards and criteria and violate drinking water standards. The MUN use will still apply to some surface waters and to all wetlands, including springs, seeps and artesian well discharges below the historic shoreline of Owens Lake.

Title 23

California Code of Regulations

ADOPT: 3957

Filed 12/20/05

Effective 12/20/05

Agency Contact: Glenda Marsh (916) 341-5558

**STATE WATER RESOURCES CONTROL BOARD
Water Quality Control Plan, Los Angeles Basin**

This amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) establishes a Total Maximum Daily Load (TMDL) to reduce toxic pollutants in sediment in Ballona Creek Estuary (Estuary). The TMDL sets numeric concentration-based targets for cadmium, copper, lead, silver, zinc, chlordane, total dichlorodiphenyltrichloroethane (DDT) isomers and metabolites, total polychlorinated biphenyls (PCBs), and total polynuclear aromatic hydrocarbons (PAHs) in the sediment for the Estuary. The targets are based on Effects Range-Low sediment quality guidelines compiled by the National Oceanic and Atmospheric Administration and will be achieved primarily by limiting the amount of pollutants associated with suspended sediment in storm water runoff.

Title 23

California Code of Regulations

ADOPT: 3939.18

Filed 12/15/05

Effective 12/15/05

Agency Contact: Joanna Jensen (916) 657-1036

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JULY 20, 2005 TO
DECEMBER 21, 2005**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

12/21/05 AMEND: 599.960, 599.961

12/20/05 AMEND: 18700, 18707, 18708

12/12/05 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80

11/16/05 AMEND: 1181

11/07/05 ADOPT: 1859.300, 1859.301, 1859.302, 1859.310, 1859.311, 1859.312, 1859.313, 1859.314, 1859.315, 1859.316, 1859.317, 1859.318, 1859.319, 1859.320, 1859.321, 1859.322, 1859.323, 1859.323.1, 1859.323.2, 1859.324, 1859.325, 1859.326, 1859.327, 1859.328, 1

11/07/05 AMEND: 20107

10/31/05 AMEND: 1859.2, 1859.81, 1866

10/27/05 AMEND: 1859.2, 1859.51, 1859.104.3, 1859.147, 1859.202, 1866, Form SAB 50-01

10/24/05 ADOPT: 1859.23 AMEND: 1859.2, 1859.122, 1859.123, 1859.123.1

10/18/05 ADOPT: 18732.5

10/11/05 ADOPT: 18117, 18772

10/11/05 AMEND: 18450.4

10/11/05 AMEND: 18401, 18427.1, 18700, 18705, 18707.9, 18730, 18750

10/06/05 ADOPT: 18735.5

09/23/05 ADOPT: 2280, 2281, 2282, 2283, 2284

09/15/05 AMEND: Div. 8, Ch. 71, Sec. 56000

09/13/05 AMEND: 18730

09/07/05 AMEND: Div. 8, Ch. 99, Sec. 58800

09/06/05 ADOPT: 1183.12, 1183.13, 1183.14
AMEND: 1181, 1181.1, 1181.2, 1181.3, 1183, 1183.01, 1183.02, 1183.03, 1183.04, 1183.05, 1183.06, 1183.07, 1183.08, 1183.1, 1183.11, 1183.12, 1183.2, 1183.21, 1183.3, 1187, 1187.2, 1187.3, 1187.4, 1188.1, 1188.3, 1188.4,

08/29/05 AMEND: Div. 8, Ch. 6, Sec. 27000

08/15/05 AMEND: 51000

08/09/05 ADOPT: 59520

08/04/05 AMEND: 2271

07/27/05 ADOPT: Div. 8, Ch. 23, Sec. 44000

07/20/05 ADOPT: 18530.7

07/20/05 AMEND: 18570

Title 3

12/15/05 AMEND: 6400

12/13/05 AMEND: 3700(c)

12/01/05 AMEND: 3700(c)

11/23/05 AMEND: 3406(b)

10/25/05 AMEND: 3406(b)

10/24/05 AMEND: 3433(b)

10/20/05 AMEND: 3591.19(a)

10/19/05 AMEND: 3406(b)

10/18/05 ADOPT: 3591.18

10/17/05 AMEND: 3406(b)

10/07/05 AMEND: 3406(b)
 10/07/05 ADOPT: 6551
 10/04/05 ADOPT: 3963
 10/03/05 AMEND: 3433
 09/28/05 ADOPT: 3591.19
 09/27/05 AMEND: 3700(c)
 09/16/05 ADOPT: 581
 08/12/05 AMEND: 3700(c)
 08/08/05 ADOPT: 1811, 1812, 1850 AMEND:
 1804, 1806, 1808, 1831, 1930, 1931,
 1932, 1940, 1941, 1942, 1943, 1944,
 1945, 1946, 1950 REPEAL: 1809, 1810,
 1851, 1851.1, 1870.1, 1870.2, 1871,
 1872, 1873, 1951, 1960, 1961
 07/21/05 AMEND: 6400

Title 4

12/21/05 ADOPT: 12359
 12/14/05 AMEND: 7075, 7082, 7084, 7092, 7093,
 7094, 7098
 12/05/05 REPEAL: 1959.5, 1959.6, 1959.7,
 1959.8, 1976.5, 1976.7
 12/05/05 AMEND: 1977
 11/28/05 ADOPT: 503, 512, 515, 516, 517, 518,
 519, 523, 524 AMEND: 500, 501, 502,
 510, 513, 514, 520, 552, 530, 531, 533
 REPEAL: 521
 11/28/05 ADOPT: 7075, 7076, 7077, 7078, 7079,
 7079, 7080, 7081, 7082, 7083, 7084,
 7085, 7086, 7087, 7088, 7089, 7090,
 7091, 7092, 7093, 7094, 7095, 7096,
 7097, 7098, 7099 REPEAL: 7000, 7001,
 7003, 7004, 7005, 7006, 7007, 7008,
 7009, 7010, 7011, 7012, 7013, 7013.
 11/23/05 AMEND: 4083
 11/01/05 ADOPT: 10300, 10302, 10310, 10315,
 10317, 10320, 10322, 10325, 10326,
 10327, 10335, 10337
 10/27/05 ADOPT: 9001, 9005, 9006, 9007, 9025,
 9027, 9050, 9051, 9052, 9053, 9054,
 9055, 9056, 9057, 9058, 9059, 9060,
 9061, 9062, 9063, 9064, 9065, 9066,
 9067, 9068, 9069, 9070 AMEND: 9020,
 9030, 9031, 9032, 9041, 9043
 10/27/05 ADOPT: 7030, 7031, 7032, 7033, 7034,
 7035, 7036, 7037, 7038, 7039, 7040,
 7041, 7042, 7043, 7044, 7045, 7046,
 7047, 7048, 7049, 7050 AMEND: 7047,
 7048 REPEAL: 7049
 10/12/05 AMEND: 1433
 09/13/05 ADOPT: 1843.6
 09/12/05 AMEND: 4140
 08/24/05 AMEND: 1663
 08/17/05 AMEND: 1976.9
 08/08/05 AMEND: 1887

Title 5

12/12/05 ADOPT: 80033.2

12/07/05 AMEND: 43810
 12/06/05 ADOPT: 11963.5 AMEND: 11704,
 11963.2, 11963.3, 11963.4, 11963.5,
 11963.6
 11/15/05 AMEND: 6111
 11/10/05 AMEND: 19826.1
 10/19/05 AMEND: 11900, 11905, 11915, 11920,
 11925, 11930, 11935
 10/14/05 ADOPT: 18092.5 AMEND: 18066,
 18069, 18078, 18081, 18083, 18084,
 18092, 18103, 18106, 18109, 18110
 10/14/05 ADOPT: 18092.5 AMEND: 18066,
 18069, 18078, 18081, 18083, 18084,
 18092, 18103, 18106, 18109, 18110
 10/11/05 ADOPT: 19850, 19851, 19852, 19853,
 19854 AMEND: 19814, 19814.1
 10/11/05 ADOPT: 18220.2, 18224.2, 18224.4,
 18240.5, 18249 AMEND: 18220, 18240,
 18248, 18244
 09/28/05 AMEND: 50500
 09/01/05 REPEAL: 1630
 08/22/05 AMEND: 850, 851, 852, 853, 853.5, 854,
 855, 857, 858, 859, 861, 862, 863, 864,
 864.5, 865, 866, 867, 867.5, 868870
 08/16/05 ADOPT: 1207.5 AMEND: 1200, 1203,
 1204.5, 1206, 1207 1209, 1210, 1211,
 1211.5, 1215, 1215.5, 1216, 1217, 1225
 08/01/05 ADOPT: 15140, 15141
 07/28/05 ADOPT: 1030.5, 1030.6, 1030.7, 1030.8

Title 8

12/20/05 AMEND: 3395
 12/14/05 AMEND: 6632(f)
 12/13/05 AMEND: 20299
 12/05/05 AMEND: 4650
 11/22/05 ADOPT: 13680, 13681, 13682, 13683,
 13684, 13685, 13686, 13687, 13688,
 13689, 13690, 13691, 13692, 13693
 11/22/05 ADOPT: 13694
 09/29/05 AMEND: 9789.11
 09/22/05 ADOPT: 9792.6, 9792.7, 9792.8, 9792.9,
 9792.10 REPEAL: 9792.11
 09/09/05 ADOPT: 9767.1, 9767.2, 9767.3, 9767.4,
 9767.5, 9767.6, 9767.7, 9767.8, 9767.9,
 9767.10, 9767.11, 9767.12, 9767.13,
 9767.14, 9767.15
 08/25/05 AMEND: 6184
 08/22/05 ADOPT: 3395
 08/10/05 AMEND: 8615
 08/09/05 AMEND: 6251
 08/02/05 AMEND: 770
 08/02/05 ADOPT: 5022.1 AMEND: 4968
 07/28/05 AMEND: 1529, 1535, 5190, 5210, and
 8358

Title 10

12/13/05 AMEND: 2312, 2312.5, 2315

11/23/05 AMEND: 260.210, 260.211, 1726, 1950.122, 2020
 11/16/05 AMEND: 2699.6600, 2699.6809
 11/15/05 AMEND: 2690.1
 11/03/05 ADOPT: 2698.95.1, 2698.95.11, 2698.95.12, 2698.96, 2698.97, 9698.97.1, 2698.98, 2698.98.1 AMEND: 2698.95
 10/20/05 AMEND: 2318.6, 2353.1, 2354
 10/07/05 ADOPT: 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2698.37, 2698.38, 2698.39, 2698.40, 2698.41, 2698.42, 2698.43 REPEAL: Sections 2698.30, 2698.31, 2698.32, 2698.33, 2698.34, 2698.35, 2698.36, 2698.37, 2698.38, 2698.39, 2698.40, 2698.
 09/28/05 AMEND: 2498.4.9
 09/28/05 AMEND: 260.121

Title 11

12/15/05 AMEND: 51.12
 12/01/05 ADOPT: 116.1
 11/22/05 ADOPT: 49.17
 10/24/05 AMEND: 1070, 1081, 1082
 08/22/05 AMEND: 1002, 1007, 1018, 1008, 1015
 08/22/05 AMEND: 1001, 1002, 1007
 08/12/05 AMEND: 1005, 1060
 08/01/05 AMEND: 1005, 1014
 07/28/05 ADOPT: 720, 721, 722, 723, 724,

Title 12

09/19/05 ADOPT: 460, 461

Title 13

12/16/05 ADOPT: 253.02 AMEND: 345.16
 12/07/05 ADOPT: 2425.1 AMEND: 2420, 2421, 2423, 2425, 2426, 2427, Incorporated Test Procedures
 12/05/05 AMEND: 425.01
 11/08/05 AMEND: 550, 551.11, 551.12
 10/27/05 AMEND: 2453, 2455
 10/18/05 AMEND: 28.18, 28.19, 28.20, 28.21, 28.22, 28.23
 09/15/05 AMEND: 1961(d)
 09/15/05 ADOPT: 1961.1 AMEND: 1900, 1961
 09/12/05 AMEND: 2262, 2264.2, 2266.5(a)(6)
 08/24/05 AMEND: 551.2, 551.15
 08/18/05 AMEND: 2754
 08/16/05 AMEND: 345.39, 345.45, 345.56, 345.78
 08/11/05 AMEND: 423.00
 08/08/05 AMEND: 2185
 08/02/05 AMEND: 2450, 2451, 2452, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465
 07/28/05 AMEND: 25.15, 25.18, 25.19, 25.21, 25.22
 07/27/05 AMEND: 350.24

Title 14

12/19/05 ADOPT: 163.1 AMEND: 163, 164
 12/06/05 ADOPT: 4970.02, 4970.03, 4970.04, 4970.05, 4970.06, 4970.07, 4970.08, 4970.09, 4970.10, 4970.11, 4970.12, 4970.13, 4970.14, 4970.15, 4970.16, 4970.17, 4970.18, 4970.19, 4970.20, 4970.21 AMEND: 4970.00, 4970.01 REPEAL: 4970.02, 4970.03, 4970.04, 4970.05
 12/02/05 AMEND: 18660.5, 18660.6, 18660.10, 18660.20, 18660.21, 18660.22, 18660.36, 18660.37
 11/30/05 ADOPT: 957.11, 957.12 AMEND: 957
 11/16/05 AMEND: 913.2 [933.2, 953.2], 913.11 [933.11, 953.11]
 11/09/05 ADOPT: 1038(i) AMEND: 1038.2, 1038(e)
 11/02/05 AMEND: 632
 11/01/05 ADOPT: 2.45, 251.9
 10/31/05 AMEND: 180.1
 10/26/05 AMEND: 2516
 10/25/05 AMEND: 11900
 10/24/05 AMEND: 1251, 1252, 1252.1, 1253, 1254, 1256, 1257
 10/18/05 ADOPT: 17939.1, 17939.2, 17939.3, 17939.4, 17939.5 AMEND: 17930, 17931, 17932, 17933, 17934, 17934.1, 17934.3, 17934.5, 17935, 17935.1, 17935.2, 17935.3, 17935.4, 17935.5, 17935.55, 17935.6, 17936
 10/13/05 AMEND: 895, 895.1, 1038, 1038(f)
 10/13/05 AMEND: 699.5
 10/12/05 ADOPT: 18459.1.2 AMEND: 18449, 18450, 18451, 18453.2, 18456, 18456.2.1, 18459, 18459.1, 18459.2.1, 18459.3, 18460.1, 18460.1.1, 18460.2, 18460.2.1, 18461, 19462, 18463, 18464, 18466
 10/06/05 AMEND: 15000, 15001, 15002, 15003, 15004, 15005, 15006, 15007, 15020, 15021, 15022, 15023, 15024, 15025, 15040, 15041, 15042, 15043, 15044, 15045, 15050, 15051, 15052, 15053, 15060, 15060.5, 15061, 15062, 15063, 15064, 15064.5, 15064.7, 15065, 15070, 15
 09/30/05 AMEND: 502, 506
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